Ontario

Tourism and Forestry Industry

Guide to Resource Stewardship Agreements

First Edition - June 2001

Prepared by
Anthony Usher Planning Consultant
for
Forest Management Branch
Ontario Ministry of Natural Resources

51523
(2.5 k.P.R. 06 06 01)
ISBN 0-7794-1388-1

© 2001, Queen's Printer for Ontario
Printed in Ontario, Canada

La présente ébauche provisoire est un document de travail qui n'est disponible qu'en anglais en vertu du règlement 411/97, en application de la *Loi sur les services en français*. Nous invitons toutefois nos lecteurs francophones à communiquer avec le Centre d'information sur les ressources naturelles. Un simple appel sans frais au 1-800-667-1840 leur permettra d'y obtenir, en français, de plus amples renseignements sur ce dossier ou sur tout autre aspect de la gestion des ressources naturelles en Ontario.

Printed on recycled paper.

101-06316/

Summary

"Resource stewardship agreements will allow the resource-based tourism and forest industries to coexist and prosper."

The Hon. John Snobelen, Minister of Natural Resources,
announcing the *Tourism and Forest Industry Memorandum of Understanding*,
November 15, 2000

This Guide is designed to help forest companies and resource-based tourism businesses negotiate resource stewardship agreements (RSAs). An RSA is a voluntary agreement between two businesses, a sustainable forest licensee and a resource-based tourism operation. RSA-like agreements already exist in some forest management units, but as a result of the 1999 *Ontario's Living Legacy Land Use Strategy*, RSAs are now being recognized and encouraged throughout the Living Legacy Planning Area.

Neither the forest licensee nor the tourism operation has to negotiate or sign an RSA. However, if one business wants to negotiate, there are consequences for the other one if it refuses to come to the table. If the two businesses negotiate but no RSA results, there are no consequences for either. If the businesses want to keep working towards agreement, mediation and non-binding arbitration are available to help them along.

In an RSA, the two businesses agree on certain things (recognized tourism values, forest management prescriptions including road use management strategies) they are proposing be added to the local Forest Management Plan in order to protect tourism. These proposals then become input into the development of the next Forest Management Plan, or an amendment to the existing Plan. They receive the same consideration and public scrutiny as any other input. The proposals do not take effect until approved by the Ministry of Natural Resources as part of the Forest Management Plan or amendment. Nor may an RSA amend a Ministry of Natural Resources land use plan.

RSAs are subject to, and do not change in any way, the *Crown Forest Sustainability Act, 1994* and the other laws and policies that govern forest management and Crown land planning.

This Guide describes the approach to developing RSAs agreed to by the resource-based tourism industry, the forest industry, and the Ontario Government in the *Memorandum of Understanding*. It explains the relationship between the RSA process and the forest management planning process. It provides advice on how to negotiate an RSA, and outlines the options available if negotiations aren't successful. All those who have contributed to the Guide hope it will help forest licensees and tourism operations negotiate RSAs that meet their needs, and build constructive, productive, and secure business relationships.

Table of Contents

Foreword 5

Notes 6

1 Background 7

2 The Memorandum of Understanding 8

3 What is a Resource Stewardship Agreement? 9
- 3.1 Who Are the Parties to an RSA? 9
- 3.2 What's In an RSA? 10
- 3.3 What Area Does an RSA Cover? 11
- 3.4 What Is the Term of an RSA? 12
- 3.5 How Is an RSA Approved and Implemented? 13
- 3.6 How Is an RSA Monitored and Evaluated? 15
- 3.7 How Is an RSA Transferable? 16
- 3.8 How Can an RSA Be Amended? 17
- 3.9 What Can an RSA Do? 18
- 3.10 What Can't an RSA Do? 18

4 The RSA Process and Forest Management Planning 19
- 4.1 The RSA Process and the FMP Process 19
- 4.2 The RSA Process and Amending an Existing FMP 24
- 4.3 The RSA and the Forest Management Plan 24

5 How to Negotiate an RSA 26
- 5.1 What Information Should Be on the Table? 26
- 5.2 How are the Tourism Values Map and Tourism Business Interest Map Developed? 26
- 5.3 How are Forest Management Prescriptions Developed? 28
- 5.4 What Kind of Help Do I Need? 29
- 5.5 What Role Do Other Stakeholders Play? 29
- 5.6 What Role Does Government Play? 30
- 5.7 What Happens if a Party is Not Willing to Negotiate? 31

6 What if Negotiations Don't Result in an RSA? 32

7 How to Keep Your RSA Working For You 38

8 For More Information 38

Appendixes

1 Tourism and Forestry Industry Memorandum of Understanding 39
2 Outline of a Typical Resource Stewardship Agreement 45
3 Issue Resolution for Mapping Tourism Values 48
4 Modified RSA Process for Complex Situations 57

Figure 1 The RSA Process and the FMP Process 20
Figure 2 The RSA Dispute Resolution Process 33

Foreword

This *Guide to Resource Stewardship Agreements* – the RSA Guide – is designed to help forest companies and resource-based tourism businesses negotiate resource stewardship agreements (RSAs). It will also help Ontario Government staff provide the support the two industries need to accomplish this.

This RSA Guide:

- briefly explains how RSAs came to be (Section 1),
- summarizes the *Tourism and Forestry Industry Memorandum of Understanding* (Section 2; the complete memorandum is in Appendix 1),
- explains what an RSA is and what it involves (Section 3),
- describes the process for developing an RSA, and the relationship between RSAs and forest management plans (Section 4),
- advises how to negotiate an RSA (Section 5),
- explains what happens if negotiations don't result in an RSA (Section 6),
- advises how to keep a completed agreement working for the parties (Section 7),
- provides an outline of a typical RSA (Appendix 2),
- provides more detailed information on mapping tourism values (Appendix 3).

If you need information on selected topics, you may need to look at only one or a few sections. However, if you are preparing for RSA negotiations, we recommend that you review the whole Guide.

RSAs are a new addition to Ontario's public land and resource planning process. This RSA Guide is a work in progress. There will inevitably be errors and omissions in this First Edition of the Guide. Even more important, it will not have benefited from the experience of those who will first use it to develop RSAs. We need your suggestions for improvement so we can release a better Second Edition in a year or two.

Please send your comments to:

Stephen Harvey, Senior Policy Advisor
Forest Management Branch
Ministry of Natural Resources
70 Foster Drive, suite 400
Sault Ste. Marie P6A 6V5
(705) 945-6713
fax: (705) 945-6711
e-mail: stephen.harvey@mnr.gov.on.ca

Notes

In the RSA Guide:

Terms defined for the purposes of this Guide are in ***bold italics***.

The definitions of those *terms* are in shaded boxes.

Direct quotes from the *Tourism and Forestry Industry Memorandum of Understanding* are in **bold roman**.

Notes explaining details of legislation, regulations, and policies, or referring you to another source, are flagged by a hand and indented.

TIP Advice on best practices and other ways to make the RSA process work well for you are flagged by "TIP" and a light bulb graphic. These are only suggestions – you don't have to follow them.

Please note that this Guide:

- *is subject to, and does not change in any way, the* Crown Forest Sustainability Act, 1994, *the forest management planning process prescribed in the Forest Management Planning Manual for Ontario's Crown Forests, and the other laws and policies that govern forest management and Crown land planning;*
- *is not an approved implementation manual for Ministry of Natural Resources forest management planning.*

1 Background

The signing of the *Tourism and Forestry Industry Memorandum of Understanding* by representatives of the two industries opens a new and encouraging chapter in a long and not always easy relationship. As the Minister of Natural Resources, the Hon. John Snobelen, said in announcing the accord in November 2000, it "will provide both industries with the security and confidence to expand".

In 1997, the Ontario Government announced its *Resource-Based Tourism Policy*, and clearly recognized the resource-based tourism industry as a major player in Crown land and resource allocation. The Government also started the ambitious Lands for Life planning process for 39 million hectares of Crown land on the southern and central portions of the Canadian Shield. Lands for Life's objectives included recognizing the land use planning needs of the resource-based tourism industry, and providing the forest industry with greater land and resource use certainty. Lands for Life resulted in the 1999 *Ontario's Living Legacy Land Use Strategy*.

Resource-based tourism **is tourism that involves the use and enjoyment of the natural environment and natural resources on Crown lands or under Crown jurisdiction, including but not limited to activities such as hunting, fishing, visiting provincial parks and conservation reserves, camping, canoeing, hiking, snowmobiling, and wildlife viewing.**

Section 3 of *Ontario's Living Legacy Land Use Strategy* describes the Government's planning policies in support of resource-based tourism in the Ontario's Living Legacy Planning Area. It also commits the Government to an RSA process to "formalize the relationship between the resource-based tourism and resource industries, and . . . encourage the sharing of information and mutual problem solving", and sets out some of the basics of that process.

There were already some agreements between forest licensees and tourism operations in some forest management units. However, the *Land Use Strategy* marked the first formal recognition by the Government that such agreements existed, and that encouraging their use by establishing a framework for negotiating RSAs could improve forest management planning and benefit both industries.

The Government then brought together forest and tourism industry representatives to lay the foundations for a new business relationship based on RSAs, consistent with the *Land Use Strategy*. A Steering Committee and Working Group were established with broad representation from the two industries, the Ministry of Natural Resources (MNR), the then Ministry of Tourism, and the Ministry of Northern Development and Mines. Following intensive negotiations, the industry representatives signed a *Memorandum of Understanding* (MoU) in July 2000. After public notice and consultation, the three Ministers endorsed the MoU in February 2001.

The *Land Use Strategy* says that the RSA process is needed because "as forest access roads and harvesting continue to affect remote and semi-remote areas, additional effort is required to ensure issues are identified early and resolved". Without the framework for cooperation that RSAs would provide, in many areas of Ontario forest management planning processes have increasingly become bogged down in issue resolution procedures and "bump-ups" that are time-consuming and costly to all parties. Serious investments of time and goodwill in the RSA process should pay off in a quicker, cheaper, and less adversarial forest management planning process.

1 Background

The signing of the *Tourism and Forestry Industry Memorandum of Understanding* by representatives of the two industries opens a new and encouraging chapter in a long and not always easy relationship. As the Minister of Natural Resources, the Hon. John Snobelen, said in announcing the accord in November 2000, it "will provide both industries with the security and confidence to expand".

In 1997, the Ontario Government announced its *Resource-Based Tourism Policy*, and clearly recognized the resource-based tourism industry as a major player in Crown land and resource allocation. The Government also started the ambitious Lands for Life planning process for 39 million hectares of Crown land on the southern and central portions of the Canadian Shield. Lands for Life's objectives included recognizing the land use planning needs of the resource-based tourism industry, and providing the forest industry with greater land and resource use certainty. Lands for Life resulted in the 1999 *Ontario's Living Legacy Land Use Strategy*.

Resource-based tourism **is tourism that involves the use and enjoyment of the natural environment and natural resources on Crown lands or under Crown jurisdiction, including but not limited to activities such as hunting, fishing, visiting provincial parks and conservation reserves, camping, canoeing, hiking, snowmobiling, and wildlife viewing.**

Section 3 of *Ontario's Living Legacy Land Use Strategy* describes the Government's planning policies in support of resource-based tourism in the Ontario's Living Legacy Planning Area. It also commits the Government to an RSA process to "formalize the relationship between the resource-based tourism and resource industries, and . . . encourage the sharing of information and mutual problem solving", and sets out some of the basics of that process.

There were already some agreements between forest licensees and tourism operations in some forest management units. However, the *Land Use Strategy* marked the first formal recognition by the Government that such agreements existed, and that encouraging their use by establishing a framework for negotiating RSAs could improve forest management planning and benefit both industries.

The Government then brought together forest and tourism industry representatives to lay the foundations for a new business relationship based on RSAs, consistent with the *Land Use Strategy*. A Steering Committee and Working Group were established with broad representation from the two industries, the Ministry of Natural Resources (MNR), the then Ministry of Tourism, and the Ministry of Northern Development and Mines. Following intensive negotiations, the industry representatives signed a *Memorandum of Understanding* (MoU) in July 2000. After public notice and consultation, the three Ministers endorsed the MoU in February 2001.

The *Land Use Strategy* says that the RSA process is needed because "as forest access roads and harvesting continue to affect remote and semi-remote areas, additional effort is required to ensure issues are identified early and resolved". Without the framework for cooperation that RSAs would provide, in many areas of Ontario forest management planning processes have increasingly become bogged down in issue resolution procedures and "bump-ups" that are time-consuming and costly to all parties. Serious investments of time and goodwill in the RSA process should pay off in a quicker, cheaper, and less adversarial forest management planning process.

2 The Memorandum of Understanding

The *Tourism and Forestry Industry Memorandum of Und rstanding* is an agreement between industry representatives that sets out how they would like to see RSAs developed. The industry representatives recommended the MoU to the three Ministers, who "recogni[zed] and support[ed]" it by their signatures. The MoU, reproduced in full in Appendix 1, has three parts.

The Purpose statement explains that the MoU **establishes a framework for negotiating [RSAs] that will allow the Resource-Based Tourism and Forestry industries in Ontario to coexist and prosper**, and commits the industries to negotiate in good faith.

Five principles of **mutual recognition and respect** are then listed.

- In the first two principles, each industry recognizes the importance of the other in the forests of Ontario.
- The third principle is that the industries **desire a proactive long term approach to conducting operations and resolving conflicts**.
- The fourth principle is that the industries will voluntarily **promote each other's interests to third parties when reasonable and appropriate**. These third parties could include tourism operation guests, local community organizations, other forest stakeholders, and so on.
- In the fifth principle, the industries and the Ontario Government recognize a list of interests **critical to the continued success and viability of industry operations**, first for the forest industry (for example, security and accessibility of wood supply), and then for the resource-based tourism industry (for example, maintenance of the perception of wilderness).

Five terms of agreement follow. Key points are:

- Every forest management plan (FMP) will specifically recognize the plan's commitment to protecting tourism values through the use of *Management Guidelines for Forestry and Resource-Based Tourism*, 2001 (the *Tourism Guidelines*), and RSAs as one method of protecting those values.
- Every FMP will map tourism values, using criteria that the MoU required be developed. The MoU's intent regarding tourism values mapping was clarified by a December 2000 agreement among the parties, "Issue Resolution for Mapping Tourism Values" (see Appendix 3). That agreement includes "Criteria for Mapping Tourism Values for the MNR Natural Resource Values Information System", developed in accordance with the MoU.
- The *Tourism Guidelines* will assist in achieving the purpose of the MoU and will not contradict it.
- Every RSA will adhere to the requirements of Appendix A to the MoU.

Finally, Appendix A to the MoU provides details on what an RSA is, what the process is for developing an RSA and how it relates to FMP and other planning processes, and what to do if the parties have problems negotiating. Sections 3 through 7 of this Guide explain the provisions of Appendix A and provide additional information and advice not in the MoU, to help forest and tourism businesses and Ontario Government staff make RSAs happen.

The MoU does not affect any existing RSA-like agreement between a forest licensee and a tourism operation. Nor does it mean that parties to an existing agreement have to switch into the RSA process to provide input into the next FMP. They are free to continue using any approach that has worked for them, for as long as they want.

The MoU is not perfect. It does not address some issues that some of the signatories felt were important and should have been addressed. But it is an unprecedented, good faith framework agreement between the two industries.

The RSA Guide is meant to explain the MoU and help people make it work. It is not meant to rewrite the MoU, to add provisions to it or provide official interpretations of its ambiguities, especially those ambiguities that were intended to make the MoU flexible and allow the RSA process to adapt to a variety of situations. All those involved with the Steering Committee and Working Group that negotiated the MoU have reviewed drafts of the Guide and contributed to its improvement.

3 What is a Resource Stewardship Agreement?

3.1 Who Are the Parties to an RSA?

An RSA is a voluntary agreement between two parties:

- one ***sustainable forest licensee*** (SF licensee),
- one ***licensed resource-based tourism operation*** (RBT operation) based within the boundaries of the SF licensee's management unit or an adjacent management unit.

A *licensed resource-based tourism operation* holds a licence under the *Tourism Act*.

Regulation 1037 under the *Tourism Act*, as amended by Regulation 371/98, requires only those "tourist establishments" that "make use of Crown resources" to be licensed. A tourist establishment is a recognized business with premises dedicated to providing roofed or camping accommodation on a continuing basis. Youth camps and private clubs are not included. As the licence issuer, the Ministry of Tourism, Culture and Recreation (MTCR) is responsible for determining whether an operation is a "tourist establishment" and "makes use of Crown resources", and therefore requires a licence. MTCR will decide if an operation should be licensed based on the *Act* and Regulation, not on whether the operation wants to negotiate an RSA. Licences are renewable each year and are automatically transferable to new owners.

To confirm whether a specific business is a licensed RBT operation, contact MTCR, which maintains an up to date list of licensed operations.

The MoU does not affect any existing RSA-like agreement between a forest licensee and a tourism operation. Nor does it mean that parties to an existing agreement have to switch into the RSA process to provide input into the next FMP. They are free to continue using any approach that has worked for them, for as long as they want.

The MoU is not perfect. It does not address some issues that some of the signatories felt were important and should have been addressed. But it is an unprecedented, good faith framework agreement between the two industries.

The RSA Guide is meant to explain the MoU and help people make it work. It is not meant to rewrite the MoU, to add provisions to it or provide official interpretations of its ambiguities, especially those ambiguities that were intended to make the MoU flexible and allow the RSA process to adapt to a variety of situations. All those involved with the Steering Committee and Working Group that negotiated the MoU have reviewed drafts of the Guide and contributed to its improvement.

3 What is a Resource Stewardship Agreement?

3.1 Who Are the Parties to an RSA?

An RSA is a voluntary agreement between two parties:

- one ***sustainable forest licensee*** (SF licensee),
- one ***licensed resource-based tourism operation*** (RBT operation) based within the boundaries of the SF licensee's management unit or an adjacent management unit.

A *licensed resource-based tourism operation* holds a licence under the *Tourism Act*.

Regulation 1037 under the *Tourism Act*, as amended by Regulation 371/98, requires only those "tourist establishments" that "make use of Crown resources" to be licensed. A tourist establishment is a recognized business with premises dedicated to providing roofed or camping accommodation on a continuing basis. Youth camps and private clubs are not included. As the licence issuer, the Ministry of Tourism, Culture and Recreation (MTCR) is responsible for determining whether an operation is a "tourist establishment" and "makes use of Crown resources", and therefore requires a licence. MTCR will decide if an operation should be licensed based on the *Act* and Regulation, not on whether the operation wants to negotiate an RSA. Licences are renewable each year and are automatically transferable to new owners.

To confirm whether a specific business is a licensed RBT operation, contact MTCR, which maintains an up to date list of licensed operations.

MTCR may use local staff of other ministries to provide customer service on its behalf. At present, Ministry of Northern Development and Mines staff serve this function in Northern Ontario.

A licensed RBT operation that is a party to an RSA must use Crown resources in the management unit licensed to the SF licensee that is the other party. However, the RBT operation does not have to be based within that unit's managed Crown forest. A licensed RBT operation can be an party to an RSA that covers Crown forest that the operation uses in the same or an adjacent management unit. This is so whether the RBT operation is located in managed Crown forest, in a provincial park or conservation reserve, or on an Indian reserve or private land.

A *sustainable forest licensee* holds a licence issued under Section 26 of the *Crown Forest Sustainability Act, 1994*, normally for an entire forest management unit.

SF licences are for 20 year terms, renewable every five years, and are transferable to new owners subject to MNR approval. There are other types of forest licences under the *Crown Forest Sustainability Act,* and their holders cannot be parties to an RSA. In most cases, these other licences cover smaller operations within Crown forest management units.

To confirm whether a specific forest resource licensee is an SF licensee, contact your local MNR office.

There are many other types of stakeholders who may have vital interests in the Crown forests and resources affected by an RSA. They are not parties to the RSA, but they are very much part of the RSA process – see Section 5.5.

The Ontario Government is not a party to an RSA.

3.2 What's In an RSA?

An RSA must include the following.

- The principles of the MoU (see Appendix 1).
- When the RSA is signed, the ***best available information on anticipated 20 year primary and five year secondary road corridors*** in the management unit. This will be replaced by maps showing projected 20 year primary road corridors and five year secondary road corridors as these are developed through the FMP process. See Section 4.1, Step 1.
- When the RSA is signed, a map of ***tourism values*** in the management unit, provided by MNR. If there are any changes to this map as it is developed through the FMP process, it will be replaced as required. See Section 5.2.
- An RSA map, showing whatever additional information the parties agree is needed to explain or illustrate the RSA's provisions, including but not limited to:
  - The boundary of the ***RSA area*** (see Section 3.3), unless the parties agree to rely on a text description of the boundary only.
  - Those ***tourism values*** that contribute to the RBT operation, and that have been agreed to by the parties and confirmed by MNR (see Section 5.2). These may or may not be on the tourism values map originally provided by MNR.

    - The locations of the proposed ***forest management prescriptions*** (see below).
- The ***forest management prescriptions*** including road use management strategies (see Section 5.3) that are intended to protect the tourism values shown on the RSA map as they are affected by forest operations, and that the parties are proposing to include in the FMP.
- A **commitment to share information** among the parties. See Section 7.
- A **list of the reference material** that was available to the parties in their negotiations.

An RSA may also include a ***tourism business interest map*** – see Section 5.2.

If negotiations result in overlapping RSAs (see Section 3.3) or RSAs that are otherwise related to each other, those RSAs may include provisions establishing a **management structure to implement the [RSAs]**.

Section 3.5 describes how MNR approves RSA provisions to be included in the FMP or its supplementary documentation, and Section 4.3 explains how approved provisions are incorporated into the FMP.

An RSA may also include provisions that will not be included in the FMP or its supplementary documentation. As long as these provisions commit only the parties and not MNR, they don't require any MNR approval, and are subject only to the limits described in Section 3.9.

TIP If your RSA includes non-FMP as well as FMP provisions, divide it into two parts. This is discussed further in Section 3.5.

Appendix 2 provides an outline of a typical RSA. This outline includes the provisions described above. It also includes other provisions that the parties would usually want to include in any RSA, to address issues that would normally come up during negotiations.

3.3 What Area Does an RSA Cover?

Since key provisions of RSAs are proposed to be included in FMPs, an RSA can only be concluded within that part of Ontario in which an FMP can be undertaken.

This area, known as the Area of the Undertaking for the *Class Environmental Assessment for Timber Management*, is the same as the Ontario's Living Legacy Planning Area.

An *RSA area* is a specific geographic area which the parties to an RSA agree the agreement will apply to. All forest management prescriptions (including road use management strategies) proposed to be included in an FMP must be confined to the RSA area. The RSA area may be the same as the area subject to those prescriptions, or a larger area.

MTCR may use local staff of other ministries to provide customer service on its behalf. At present, Ministry of Northern Development and Mines staff serve this function in Northern Ontario.

A licensed RBT operation that is a party to an RSA must use Crown resources in the management unit licensed to the SF licensee that is the other party. However, the RBT operation does not have to be based within that unit's managed Crown forest. A licensed RBT operation can be an party to an RSA that covers Crown forest that the operation uses in the same or an adjacent management unit. This is so whether the RBT operation is located in managed Crown forest, in a provincial park or conservation reserve, or on an Indian reserve or private land.

A *sustainable forest licensee* holds a licence issued under Section 26 of the *Crown Forest Sustainability Act, 1994*, normally for an entire forest management unit.

SF licences are for 20 year terms, renewable every five years, and are transferable to new owners subject to MNR approval. There are other types of forest licences under the *Crown Forest Sustainability Act*, and their holders cannot be parties to an RSA. In most cases, these other licences cover smaller operations within Crown forest management units.

To confirm whether a specific forest resource licensee is an SF licensee, contact your local MNR office.

There are many other types of stakeholders who may have vital interests in the Crown forests and resources affected by an RSA. They are not parties to the RSA, but they are very much part of the RSA process – see Section 5.5.

The Ontario Government is not a party to an RSA.

3.2 What's In an RSA?

An RSA must include the following.

- The principles of the MoU (see Appendix 1).
- When the RSA is signed, the ***best available information on anticipated 20 year primary and five year secondary road corridors*** in the management unit. This will be replaced by maps showing projected 20 year primary road corridors and five year secondary road corridors as these are developed through the FMP process. See Section 4.1, Step 1.
- When the RSA is signed, a map of ***tourism values*** in the management unit, provided by MNR. If there are any changes to this map as it is developed through the FMP process, it will be replaced as required. See Section 5.2.
- An RSA map, showing whatever additional information the parties agree is needed to explain or illustrate the RSA's provisions, including but not limited to:
  - The boundary of the ***RSA area*** (see Section 3.3), unless the parties agree to rely on a text description of the boundary only.
  - Those ***tourism values*** that contribute to the RBT operation, and that have been agreed to by the parties and confirmed by MNR (see Section 5.2). These may or may not be on the tourism values map originally provided by MNR.

- The locations of the proposed ***forest management prescriptions*** (see below).

- The ***forest management prescriptions*** including road use management strategies (see Section 5.3) that are intended to protect the tourism values shown on the RSA map as they are affected by forest operations, and that the parties are proposing to include in the FMP.
- A **commitment to share information** among the parties. See Section 7.
- A **list of the reference material** that was available to the parties in their negotiations.

An RSA may also include a ***tourism business interest map*** – see Section 5.2.

If negotiations result in overlapping RSAs (see Section 3.3) or RSAs that are otherwise related to each other, those RSAs may include provisions establishing a **management structure to implement the [RSAs]**.

Section 3.5 describes how MNR approves RSA provisions to be included in the FMP or its supplementary documentation, and Section 4.3 explains how approved provisions are incorporated into the FMP.

An RSA may also include provisions that will not be included in the FMP or its supplementary documentation. As long as these provisions commit only the parties and not MNR, they don't require any MNR approval, and are subject only to the limits described in Section 3.9.

TIP If your RSA includes non-FMP as well as FMP provisions, divide it into two parts. This is discussed further in Section 3.5.

Appendix 2 provides an outline of a typical RSA. This outline includes the provisions described above. It also includes other provisions that the parties would usually want to include in any RSA, to address issues that would normally come up during negotiations.

3.3 What Area Does an RSA Cover?

Since key provisions of RSAs are proposed to be included in FMPs, an RSA can only be concluded within that part of Ontario in which an FMP can be undertaken.

This area, known as the Area of the Undertaking for the *Class Environmental Assessment for Timber Management*, is the same as the Ontario's Living Legacy Planning Area.

An *RSA area* is a specific geographic area which the parties to an RSA agree the agreement will apply to. All forest management prescriptions (including road use management strategies) proposed to be included in an FMP must be confined to the RSA area. The RSA area may be the same as the area subject to those prescriptions, or a larger area.

An RSA area will normally be within a single management unit, but in some circumstances it could span two units. If a lake system or other area of interest to an RBT operation is divided between two units, and the SF licensee is the same in both, those parties could conclude one agreement. The prescriptions proposed on each side of the boundary would be fed into the FMP processes on each side, which would probably be operating on different five year cycles. Though unlikely, this could apply to more than two units.

If the parties agree that the RSA area is larger than the area subject to forest management prescriptions, neither that agreement, nor the inclusion of the RSA map in the supplementary documentation to the FMP if desired by the plan author and MNR (see Section 4.3), in any way represent an MNR-endorsed land use designation of the RSA area.

RSA areas can include Ontario Crown land only – not Indian reserves, federal lands, or private lands. They cannot include regulated provincial parks and conservation reserves. The RSA map may identify these lands but should clearly exclude them from the RSA area.

An SF licensee may conclude overlapping RSAs with different RBT operations. In other words, the same territory may be included within more than one RSA covering the same time period. However, the provisions of these RSAs that are to be included in the FMP may not conflict with each other. It is up to the parties to resolve any conflicts.

3.4 What Is the Term of an RSA?

The parties may agree to an **evergreen** agreement. This does not mean an agreement forever. In Ontario, "evergreen" means (among other things) the renewal provisions first applied to Forest Management Agreements in the 1980s, and that now apply to SF licences.

An *evergreen* RSA would have term provisions corresponding to Section 26 of the *Crown Forest Sustainability Act, 1994*:

- **the term of the RSA would be 20 years, or some shorter period agreed by the parties,**
- **the parties would review the RSA every five years,**
- **if as a result of a review the parties agree to renew the RSA, the agreement's expiry date would be put off to 20 years (or the agreed shorter period) from the review date.**

If the parties don't want an evergreen agreement, then the RSA has the same five year term as the FMP in which its provisions would be included, or longer if the parties agree.

A non-evergreen RSA must have **a *planning horizon* of at least 20 years**. In other words, if the RSA is not evergreen, and even if its term is only five years, it still needs to look at strategic issues from a long term viewpoint.

A ***planning horizon*** is the period over which a plan should take a long term strategic perspective. Instead of "planning horizon", the *Forest Management Planning Manual* uses the term "plan period": "the [20] year timeframe for which strategic management direction is established, and forest sustainability is determined, in a forest management plan".

Even if an SF licensee and an RBT operation do not expect forest operations to affect the RBT operation's tourism values during the upcoming FMP term, they may be better off negotiating an RSA sooner rather than later. This will build the relationship between the parties, and help them deal with the harder choices they will face five or 10 years hence. A signed longer term agreement that represents forward thinking and planning may also improve the security of both parties' investments in the forest.

If the parties choose an evergreen or other longer term agreement, they are free to include in the RSA:

- provisions they will propose be included in later FMPs,
- more general statements of intent relevant to later FMPs (for example, that they wish to maintain the remoteness of Leech Lake for the next 15 years).

The parties may either make public provisions that would affect later FMPs as part of consultation on the upcoming FMP (see Section 4.1, Step 7), or keep them private for the time being.

Whether or not the RSA is evergreen, MNR can only consider and may only approve as part of an FMP those provisions that the parties propose be included in that FMP, and only for the five year term of that FMP. If the parties have agreed on provisions they will propose be included in later FMPs, they will need to submit them for consideration during each future FMP process.

3.5 How Is an RSA Approved and Implemented?

RSAs will always include provisions that the parties propose to be included in the FMP (or its supplementary documentation). Any provision that would fall under the definition of ***forest management prescriptions*** in Section 5.3 must be proposed for inclusion in the FMP. RSAs may also include provisions that do not belong in the FMP.

If your RSA includes both types of provisions, divide it into two parts. For the purposes of this section of the Guide, let's refer to them as Part 1, the provisions the parties are proposing to MNR for inclusion in the upcoming or existing FMP, and Part 2, the provisions that do not belong in the FMP or its supplementary documentation.

Every RSA, to the extent it is included or referenced in an FMP (or its supplementary documentation), **is subject to final approval by . . . MNR**, as part of MNR's approval of that FMP. The Part 1 provisions, that the parties propose be included in the FMP, including the maps and forest management prescriptions required to be included in the RSA (see Section 3.2), do not come into effect when the parties sign the RSA. They remain proposals until the public reviews them as part of the FMP process, and MNR approves them as part of the FMP. As well, the Part 1 provisions only come into force when the term begins of the FMP in which they are being included, unless they are being included in an existing FMP by amendment, in which case they come into force when the amendment takes effect. For more on amending an existing FMP, see Section 4.2.

An RSA area will normally be within a single management unit, but in some circumstances it could span two units. If a lake system or other area of interest to an RBT operation is divided between two units, and the SF licensee is the same in both, those parties could conclude one agreement. The prescriptions proposed on each side of the boundary would be fed into the FMP processes on each side, which would probably be operating on different five year cycles. Though unlikely, this could apply to more than two units.

If the parties agree that the RSA area is larger than the area subject to forest management prescriptions, neither that agreement, nor the inclusion of the RSA map in the supplementary documentation to the FMP if desired by the plan author and MNR (see Section 4.3), in any way represent an MNR-endorsed land use designation of the RSA area.

RSA areas can include Ontario Crown land only – not Indian reserves, federal lands, or private lands. They cannot include regulated provincial parks and conservation reserves. The RSA map may identify these lands but should clearly exclude them from the RSA area.

An SF licensee may conclude overlapping RSAs with different RBT operations. In other words, the same territory may be included within more than one RSA covering the same time period. However, the provisions of these RSAs that are to be included in the FMP may not conflict with each other. It is up to the parties to resolve any conflicts.

3.4 What Is the Term of an RSA?

The parties may agree to an **evergreen** agreement. This does not mean an agreement forever. In Ontario, "evergreen" means (among other things) the renewal provisions first applied to Forest Management Agreements in the 1980s, and that now apply to SF licences.

An *evergreen* RSA would have term provisions corresponding to Section 26 of the *Crown Forest Sustainability Act, 1994*:

- **the term of the RSA would be 20 years, or some shorter period agreed by the parties,**
- **the parties would review the RSA every five years,**
- **if as a result of a review the parties agree to renew the RSA, the agreement's expiry date would be put off to 20 years (or the agreed shorter period) from the review date.**

If the parties don't want an evergreen agreement, then the RSA has the same five year term as the FMP in which its provisions would be included, or longer if the parties agree.

A non-evergreen RSA must have **a *planning horizon* of at least 20 years**. In other words, if the RSA is not evergreen, and even if its term is only five years, it still needs to look at strategic issues from a long term viewpoint.

A *planning horizon* is the period over which a plan should take a long term strategic perspective. Instead of "planning horizon", the *Forest Management Planning Manual* uses the term "plan period": "the [20] year timeframe for which strategic management direction is established, and forest sustainability is determined, in a forest management plan".

Even if an SF licensee and an RBT operation do not expect forest operations to affect the RBT operation's tourism values during the upcoming FMP term, they may be better off negotiating an RSA sooner rather than later. This will build the relationship between the parties, and help them deal with the harder choices they will face five or 10 years hence. A signed longer term agreement that represents forward thinking and planning may also improve the security of both parties' investments in the forest.

If the parties choose an evergreen or other longer term agreement, they are free to include in the RSA:

- provisions they will propose be included in later FMPs,
- more general statements of intent relevant to later FMPs (for example, that they wish to maintain the remoteness of Leech Lake for the next 15 years).

The parties may either make public provisions that would affect later FMPs as part of consultation on the upcoming FMP (see Section 4.1, Step 7), or keep them private for the time being.

Whether or not the RSA is evergreen, MNR can only consider and may only approve as part of an FMP those provisions that the parties propose be included in that FMP, and only for the five year term of that FMP. If the parties have agreed on provisions they will propose be included in later FMPs, they will need to submit them for consideration during each future FMP process.

3.5 How Is an RSA Approved and Implemented?

RSAs will always include provisions that the parties propose to be included in the FMP (or its supplementary documentation). Any provision that would fall under the definition of ***forest management prescriptions*** in Section 5.3 must be proposed for inclusion in the FMP. RSAs may also include provisions that do not belong in the FMP.

If your RSA includes both types of provisions, divide it into two parts. For the purposes of this section of the Guide, let's refer to them as Part 1, the provisions the parties are proposing to MNR for inclusion in the upcoming or existing FMP, and Part 2, the provisions that do not belong in the FMP or its supplementary documentation.

Every RSA, to the extent it is included or referenced in an FMP (or its supplementary documentation), **is subject to final approval by . . . MNR**, as part of MNR's approval of that FMP. The Part 1 provisions, that the parties propose be included in the FMP, including the maps and forest management prescriptions required to be included in the RSA (see Section 3.2), do not come into effect when the parties sign the RSA. They remain proposals until the public reviews them as part of the FMP process, and MNR approves them as part of the FMP. As well, the Part 1 provisions only come into force when the term begins of the FMP in which they are being included, unless they are being included in an existing FMP by amendment, in which case they come into force when the amendment takes effect. For more on amending an existing FMP, see Section 4.2.

As a signer of the MoU, MNR recognizes the values, interests, and importance of the two industries, and the desirability of the RSA process as a new chapter in their relationship. MNR must also recognize and respect the thought, effort, and commitment that the parties will invest in each RSA.

MNR is responsible for conserving and managing Ontario's public lands and resources for all its people. Therefore, MNR must also consider the following in deciding whether to approve an RSA's Part 1 provisions as part of the FMP.

- Are the provisions proposed to be included in the FMP consistent with the MoU and this Guide?
- Do they conform with the *Crown Forest Sustainability Act, 1994*, the *Forest Management Planning Manual*, the *Forest Operations and Silviculture Manual*, and other Ontario laws and regulations?
- If they or similar provisions were included in a previous FMP, did the annual reports and/or report of past forest operations (see Section 3.6) determine that they were effective?
- Will they maintain or improve long term resource sustainability?
- Will they not cause unacceptable conflict among resource users?
- Will they not prejudice Aboriginal or treaty rights?
- Will they not prejudice the irrevocable property rights of others?
- Will they not require unacceptable Ontario Government expenditures or staff commitments?
- In light of these considerations, the Government's commitment to the RSA process, and local citizens committee and other public response to the proposed provisions during the FMP process, is it in the public interest to approve these provisions as part of the FMP?

If MNR decides not to approve any proposed Part 1 provision as part of the FMP, MNR will provide the parties (in writing) with clear reasons for this decision, and say what, if any, changes could be made to the provision to increase its chances of being approved.

If MNR advises the parties that it will not approve any proposed Part 1 provision as part of the FMP, **the parties . . . will meet to determine whether further negotiations are required**. These negotiations could be any or all of:

- between the parties to renegotiate the provision,
- with other stakeholders to resolve issues,
- with MNR to resolve issues, including whether the parties still wish to propose the remaining Part 1 provisions.

To resolve such a dispute between themselves and MNR, the parties are also free to use the remedies available in the FMP process (see Section 6, Step 5).

TIP The parties may want to keep open the option that if MNR does not approve some or all of the Part 1 provisions of an RSA as part of the FMP, or if the provisions included in the FMP are later changed in a way not satisfactory to the parties (see Section 3.8), part or all of the rest of the RSA would be voided. Include an appropriate provision in your RSA if the parties want to be able to back out of the RSA in such cases.

Section 5.5 suggests how to get other stakeholders and MNR onside, and increase the likelihood that MNR will approve the proposed Part 1 provisions as part of the FMP.

Once approved by MNR as part of an FMP, the Part 1 provisions of an RSA are legally binding in the same way as the rest of the FMP: on MNR, on all forest resource licensees within the RSA area, and on the licensees' employees and contractors.

The Part 2 provisions of an RSA, that are not proposed to be included in the FMP or its supplementary documentation, are a private agreement between the parties. These provisions come into force when the parties sign the RSA, unless the RSA provides otherwise. The Part 2 provisions bind the parties in the same way as any other private contract would, and they don't bind anyone else.

If Part 2 includes provisions that the parties propose to include in later FMPs, what takes effect on signing is only the parties' commitment to advance these proposals in the future. When the time comes to propose these provisions for the upcoming FMP, they would become Part 1 provisions.

To avoid later misunderstandings, include a provision in your RSA along the lines of: "The Part 2 provisions take effect when this agreement is signed. The Part 1 provisions take effect if, as, and when they are incorporated into the Forest Management Plan for the Moose Pasture Forest Management Unit for the period April 1, 2003 to March 31, 2023, and subsequent plans for that unit."

3.6 How Is an RSA Monitored and Evaluated?

The provisions of an RSA that are included in an FMP will be monitored and evaluated by MNR and the SF licensee as part of the overall monitoring and evaluation of the FMP.

Part C, "Monitoring and Reporting", of the *Forest Management Planning Manual*, describes these responsibilities and who undertakes them, including:

- carrying out the monitoring program prescribed in the FMP,
- preparing annual reports on forest management operations,
- preparing the report of past forest operations as each five year FMP cycle ends.

In the same way:

- MNR and the SF licensee will be responsible for compliance, as required for all aspects of an FMP by the *Forest Compliance Handbook*,
- independent audits of all aspects of forest management are conducted for each management unit every five years.

Because an RSA makes an RBT operation a partner with the SF licensee in developing the FMP provisions that will be evaluated, the RBT operation should also participate in the monitoring and evaluation process. Often, the RBT operation will be in the best position to effectively monitor relevant activities, such as unauthorized use of roads, unauthorized making of trails, impacts of habitat modification on wildlife populations and hunting success, and so on. An RSA may include provisions for the RBT operation to monitor and evaluate aspects of the FMP that flow from the RSA.

3.7 How Is an RSA Transferable?

If the ownership of an SF licensee changes, or if MNR issues a new SF licence in accordance with the provisions of the *Crown Forest Sustainability Act, 1994*, during the term of an FMP which includes provisions proposed by an RSA, those provisions (and the rest of the FMP) are legally binding on the new licensee.

If the ownership of an RBT operation that is party to an RSA changes, the RSA is binding on the new owner, provided the operation continues to be licensed. This includes a new owner who is not incorporating the acquired operation into an existing licensed operation, but **takes reasonable steps at the time of the transfer to become a [licensed] RBT [operation] and receives a licence within a reasonable time**.

If an RBT operation that is party to an RSA changes owners and ceases to be licensed because:

- under the new owner, the operation ceases to be a "tourist establishment" or no longer makes use of Crown resources, and therefore no longer needs a licence (see Section 3.1), or
- the new owner refuses to apply for a licence,

then the RSA is void, including the provisions of the RSA that are in the FMP MNR will determine whether the FMP needs to be amended to reflect this.

For those provisions of an RSA that are not included in the FMP, the parties may agree in the RSA to conditions different from those in this Guide for what happens in case of change of ownership.

As soon as a party to the RSA knows that its ownership will change and who the new owner will be, it must advise, as soon as possible and before the transfer is completed, the other party to the RSA, the MNR district manager, and MTCR. This is in addition to the legal requirements for transfer of RBT operation licences and SF licences.

3.8 How Can an RSA Be Amended?

An RSA can only be amended by agreement of both parties.

If MNR does not approve as part of an FMP provisions that the RSA proposed to include in the FMP, this does not actually amend the RSA. However, the non-approved provisions will have no effect. It is up to the parties to decide whether to renegotiate and agree on new proposed provisions, drop those aspects of the RSA, drop the RSA entirely, or use FMP process remedies (see Section 3.5).

An FMP could be amended during its term so as to change or repeal provisions previously included as a result of an RSA. Of course, the RSA parties would have their say on this during public consultation on the proposed amendment. If an FMP is amended in this way, the effect on the RSA is the same as if MNR does not approve provisions that an RSA proposed be included in an FMP (see Section 3.5).

During the term of an RSA, the parties may agree to add new proposed provisions to be included in an FMP. They will have two options:

- wait until the next five year FMP cycle to seek MNR approval, or
- seek an amendment to the existing FMP (see Section 4.2).

3.9 What Can an RSA Do?

An RSA may propose to include in an FMP any forest management prescription that does not contravene the *Crown Forest Sustainability Act, 1994*, the *Forest Management Planning Manual*, the *Forest Operations and Silviculture Manual*, or other applicable laws and regulations.

The *Tourism Guidelines* provide many examples of prescriptions. However, an RSA may also propose an approach that is not found in the *Tourism Guidelines*.

An RSA's non-FMP provisions can commit the parties to anything that does not contravene Ontario and federal laws and regulations, and is considered legally acceptable within a private contract.

3.10 What Can't an RSA Do?

An RSA may not:

- contravene any of the laws and regulations mentioned in Section 3.9,
- prejudice or affect in any way any Aboriginal or treaty right of Aboriginal people,
- restrict the public right to boat on, or travel on the ice surface of, a navigable waterway,
- amend any forest management plan except through the process described in the *Forest Management Planning Manual* and this Guide,
- amend *Ontario's Living Legacy Land Use Strategy*, any land use plan approved under the *Public Lands Act*, or any MNR District Land Use Guidelines where still in force.

If the parties believe that a change is needed to any of the three types of MNR land use plans mentioned above, they should seek an amendment through the processes established by MNR for doing so (contact your local MNR office for more information). Such amendments could include the designation of an RSA area as an enhanced management area for resource-based tourism, as suggested in *Ontario's Living Legacy Land Use Strategy*.

4 The RSA Process and Forest Management Planning

This section of the Guide applies only to those provisions of an RSA proposed to be included in an FMP.

4.1 The RSA Process and the FMP Process

Preparing an FMP normally takes 27 to 30 months from start to finish. For example, for an FMP with a five year term and 20 year plan period starting April 1, 2005, the planning team would start its work between October 2002 and January 2003. The RSA process will normally be most effective, and result in provisions that can be included in the next five year FMP, if it fits within the framework and timing set out in the *Forest Management Planning Manual*. This is the clear intention of the MoU.

Figure 1 shows how the RSA process relates to the FMP process and provides input into it, where the RSA is leading to provisions proposed for the upcoming FMP. The following paragraphs provide more details on the boxes on the RSA process side of the figure. For more details on the FMP process side of the figure, see the *Forest Management Planning Manual*. The timeline in Figure 1 is an approximate, typical timeline for key stages of a 30 month FMP process. For the steps of the RSA process, the timeline is, except where noted otherwise below, only good practice suggested by this Guide and does not have to be followed.

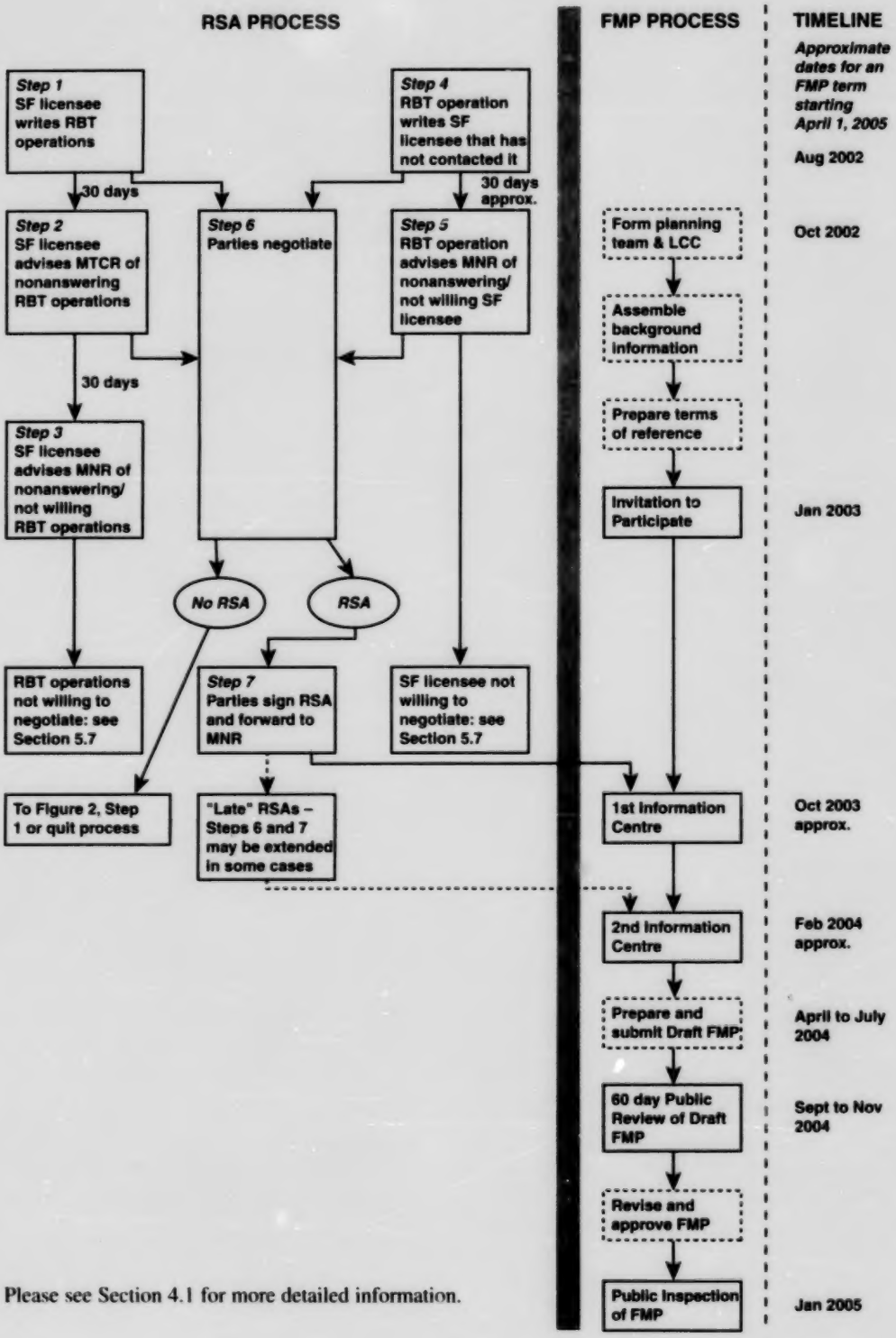
Step 1

The SF licensee writes, by **registered mail**, to all licensed RBT operations located in the management unit, or in adjacent management units and using Crown resources within the licensee's unit (see also Section 3.1). This is to be done **during the appropriate time of year to ensure the general availability of [RBT operators]**, in other words, generally between May and October, though this may vary somewhat by management unit. MTCR will provide the licensee with an up to date list of licensed operations in the management unit or using the unit's Crown resources, with addresses, phone/fax numbers, and e-mail addresses. (Each January, MNR will alert MTCR of FMP processes to be started during the coming year.)

The licensee's letter:

- should be sent by the August 31st before FMP preparation begins,
- should remind the RBT operation that the preparation of the next FMP will begin soon (for example, a letter sent in August 2002 might refer to FMP preparation starting in October 2002, for an FMP term beginning April 1, 2005),
- should say that the SF licensee is willing to negotiate an RSA in accordance with the MoU and this Guide,
- may set as a condition to entering negotiations, that the RBT operation agree beforehand to keep confidential any information that the SF licensee shares with the RBT operation and designates as confidential,

Figure 1 The RSA Process and the FMP Process


RSA PROCESS
FMP PROCESS
TIMELINE
Approximate dates for an FMP term starting April 1, 2005
Step 1
SF licensee writes RBT operations
30 days
Step 2
SF licensee advises MTCR of nonanswering RBT operations
30 days
Step 3
SF licensee advises MNR of nonanswering/ not willing RBT operations
RBT operations not willing to negotiate: see Section 5.7
To Figure 2, Step 1 or quit process
Step 4
RBT operation writes SF licensee that has not contacted it
30 days approx.
Step 5
RBT operation advises MNR of nonanswering/ not willing SF licensee
SF licensee not willing to negotiate: see Section 5.7
Step 6
Parties negotiate
No RSA
RSA
Step 7
Parties sign RSA and forward to MNR
"Late" RSAs – Steps 6 and 7 may be extended in some cases
Aug 2002
Form planning team & LCC
Oct 2002
Assemble background information
Prepare terms of reference
Invitation to Participate
Jan 2003
1st Information Centre
Oct 2003 approx.
2nd Information Centre
Feb 2004 approx.
Prepare and submit Draft FMP
April to July 2004
60 day Public Review of Draft FMP
Sept to Nov 2004
Revise and approve FMP
Public Inspection of FMP
Jan 2005

Please see Section 4.1 for more detailed information.

- should enclose this Guide or say how the RBT operation can obtain a copy,
- must enclose the ***best available information on anticipated 20 year primary and five year secondary road corridors***, or say that this information will be provided as soon as the RBT operation agrees to any confidentiality conditions required by the SF licensee,
- should ask the RBT operation to advise the SF licensee by mail, fax, or e-mail whether or not it is willing to negotiate an RSA, and ask that this response reach the licensee within 30 days of the date of the letter.

Best available information on anticipated 20 year primary and five year secondary road corridors **means the map and text information that the SF licensee can reasonably provide at the current stage of the FMP process, consistent with the *Forest Management Planning Manual*, and recognizing that the licensee:**

- **should at any time be able to provide information on roads existing and planned up to the end of the current FMP term; normally, these roads will account for most of the primary and many of the secondary corridors in the next FMP term,**
- **should at any time be able to provide its best estimates of areas where it would most likely want to propose corridors, and would most and least likely want to operate, for the next term of the FMP,**
- **consistent with the spirit of the MoU, should be able to share information with RBT operations on a confidential basis, before it is released to the public as part of the FMP process.**

As part of agreeing to negotiate, an RBT operation may set as a condition to entering negotiations, that the SF licensee agree beforehand to keep confidential any information that the RBT operation shares with the SF licensee and designates as confidential.

Step 2

Thirty days after writing the RBT operations (or as soon as possible thereafter), the SF licensee forwards to MTCR a list of those RBT operations that have not answered. As soon as possible, MTCR should contact those operations and confirm their intentions. If an RBT operation advises MTCR that it is willing to negotiate, the operation and MTCR should agree that one or the other will advise the SF licensee, by mail, fax, or e-mail, as soon as possible.

Step 3

Thirty days after forwarding the lists to MTCR (or as soon as possible thereafter), the SF licensee forwards to the MNR district manager a list of those RBT operations that have either still not answered or have said, either directly to the SF licensee or through MTCR, that they are ***not willing to negotiate*** an RSA. Section 5.7 describes the consequences for these operations.

Not willing to negotiate **means refusing to meet with the other party.**

A party may have good reasons not to want to negotiate, without lacking goodwill or being obstinate. For example, a party may just not be interested in the RSA process and its potential benefits, or may not consider the process relevant or worthwhile right now because it does not expect to be affected by forest management activities in the near future.

- should enclose this Guide or say how the RBT operation can obtain a copy,
- must enclose the ***best available information on anticipated 20 year primary and five year secondary road corridors***, or say that this information will be provided as soon as the RBT operation agrees to any confidentiality conditions required by the SF licensee,
- should ask the RBT operation to advise the SF licensee by mail, fax, or e-mail whether or not it is willing to negotiate an RSA, and ask that this response reach the licensee within 30 days of the date of the letter.

Best available information on anticipated 20 year primary and five year secondary road corridors means the map and text information that the SF licensee can reasonably provide at the current stage of the FMP process, consistent with the *Forest Management Planning Manual*, and recognizing that the licensee:

- should at any time be able to provide information on roads existing and planned up to the end of the current FMP term; normally, these roads will account for most of the primary and many of the secondary corridors in the next FMP term,
- should at any time be able to provide its best estimates of areas where it would most likely want to propose corridors, and would most and least likely want to operate, for the next term of the FMP,
- consistent with the spirit of the MoU, should be able to share information with RBT operations on a confidential basis, before it is released to the public as part of the FMP process.

As part of agreeing to negotiate, an RBT operation may set as a condition to entering negotiations, that the SF licensee agree beforehand to keep confidential any information that the RBT operation shares with the SF licensee and designates as confidential.

Step 2

Thirty days after writing the RBT operations (or as soon as possible thereafter), the SF licensee forwards to MTCR a list of those RBT operations that have not answered. As soon as possible, MTCR should contact those operations and confirm their intentions. If an RBT operation advises MTCR that it is willing to negotiate, the operation and MTCR should agree that one or the other will advise the SF licensee, by mail, fax, or e-mail, as soon as possible.

Step 3

Thirty days after forwarding the lists to MTCR (or as soon as possible thereafter), the SF licensee forwards to the MNR district manager a list of those RBT operations that have either still not answered or have said, either directly to the SF licensee or through MTCR, that they are ***not willing to negotiate*** an RSA. Section 5.7 describes the consequences for these operations.

Not willing to negotiate means **refusing to meet with the other party**.

A party may have good reasons not to want to negotiate, without lacking goodwill or being obstinate. For example, a party may just not be interested in the RSA process and its potential benefits, or may not consider the process relevant or worthwhile right now because it does not expect to be affected by forest management activities in the near future.

Step 4

Any RBT operation wanting to negotiate an RSA that has not heard from the SF licensee because the SF licensee has failed to make contact, communicates with the SF licensee by mail, fax, or e-mail. This communication should say that because preparation of the next FMP is beginning, the RBT operation wants to negotiate an RSA in accordance with the MoU and this Guide.

Step 5

If after a reasonable period of time (say 30 days) an RBT operation communicating with an SF licensee has not received an answer from the licensee, or if the licensee has advised it is not willing to negotiate, the RBT operation should advise the MNR district manager. MNR should as soon as possible contact the SF licensee and confirm its intentions. If the licensee advises MNR that it is willing to negotiate, the licensee and MNR should agree that one or the other will advise the RBT operation, by mail, fax, or e-mail, as soon as possible. Section 5.7 describes the consequences for an SF licensee that advises that it is ***not willing to negotiate***.

Step 6

Any time starting 30 days after the Step 1 letter, the interested parties begin negotiations. The SF licensee and a group of RBT operations with related issues may agree to meet together at first, to exchange information and discuss general principles. However, since each RSA is an agreement between the SF licensee and one RBT operation, these discussions will normally develop into one-to-one negotiations.

MNR strongly urges the interested parties to seek a scoping meeting with Ministry staff before they actually begin negotiations. MNR will be pleased to share with parties committed to negotiation all relevant policy and information, and to explain the criteria it will eventually use in deciding whether to approve the RSA proposals for inclusion in the FMP (see Section 3.5). This early consultation with MNR may save a lot of trouble later on (see also Section 5.5). If the parties forward an RSA to MNR (Step 7) without having held a scoping meeting with the Ministry, MNR will want the parties to justify why they did not feel that such a meeting was necessary or desirable.

TIP Before starting to negotiate, make sure that you have signed with the other party a document agreeing in advance to any conditions to the RSA process that the parties may consider appropriate. These could include:

- confidentiality conditions; however, these can only apply within the RSA process (see Step 7);
- conditions about the use of the FMP process remedies described in Section 6, Step 5.

Section 5 provides information on how to negotiate an RSA, and what the parties need to bring to the table. If the negotiations don't result in an RSA, the parties are free to quit the process, but if they want to keep trying, see Section 6 and Figure 2.

Step 7

If the negotiations succeed, the RBT operation and the SF licensee sign an RSA that includes all the required items listed in Section 3.2. They should then forward the RSA to the MNR district manager, or at least those provisions that the RSA proposes to include in the FMP or that would otherwise affect it.

At this point, the RSA provisions proposed to be included in the FMP or that would otherwise affect it become part of the FMP process and are subject to full public consultation as described in the *Forest Management Planning Manual*. For this reason, the MoU states that the **RSA negotiation process will normally be commenced prior to the Invitation to Participate in the FMP process and completed for the first Information Centre**, as shown in Figure 1. Step 7 should be completed enough in advance of the first Information Centre that the RSA, or those parts of it relevant to the FMP, can be included in the information available for public review. If the parties want to keep confidential any or all portions of the RSA that are not relevant to the FMP, they should do so by not forwarding those portions to MNR.

There may be delays when negotiations are sensitive. A "late" RSA is not normally desirable, but may be acceptable if the proposed forest management prescriptions do not involve major changes to what the licensee already is or would be proposing, and are not expected to be particularly controversial. A "late" RSA may also be acceptable if the parties have consulted with other stakeholders while preparing the RSA; see Section 5.5. If the parties realize that the RSA they are negotiating will not be ready for the first Information Centre, they should as soon as possible discuss with the plan author and the MNR district manager the acceptability of their "late" RSA. The latest that Step 7 should ever be completed is before the second Information Centre.

Modified RSA Process for Complex Situations

The MoU timetable for the RSA process may not always be realistic in more complex situations. "Late" RSAs as described above are fine in simpler situations where unexpected delays arise. However, the MoU timetable can be expected to be difficult or impossible to meet in situations such as:

- Before the first or even the second Information Centre, the SF licensee can only identify to the RBT operation primary road corridor alternatives and optional areas for harvest operations that are far more extensive than they will be in the approved FMP.
- Before the first or even the second Information Centre, the SF licensee cannot confirm whether or how the RBT operation would be affected by harvest operations or primary road corridors.
- The SF licensee and the RBT operation have never before negotiated RSAs or RSA-like agreements.
- The effects of harvest operations or primary road corridors on the RBT operation are expected to be very substantial and/or controversial.

In complex situations, any provisions the parties agree to propose for inclusion in an FMP may need to be continually renegotiated until as late as the completion of the draft FMP, just before the draft is made available for public review. However, it's still essential that a clear indication of the parties' intentions becomes part of the FMP process and subject to full public consultation, by the second Information Centre at the very latest.

Therefore, parties who believe they cannot meet the MoU's timetable because their situations are complex are encouraged to follow a modified RSA process, to better achieve the MoU's intent. Appendix 4 describes this process.

* * *

The Step 1 startup suggested above, 32 months before the next FMP takes effect, may seem very early to some. However, because many RBT operators are away from much or all of November through April, this lead time allows for the negotiating parties to:

- be identified, have a startup meeting by the October of the year when FMP preparation begins, and exchange initial information before winter,
- continue discussion and information exchange over the winter, by phone, e-mail, etc.,
- resume serious negotiations the next spring, hopefully leading to an RSA by the first Information Centre, around October of the second year of FMP preparation.

4.2 The RSA Process and Amending an Existing FMP

The parties may decide that they want to conclude an RSA and seek to have its provisions incorporated into an existing FMP, because they missed their window of opportunity in the FMP cycle, or are not prepared to wait till the next FMP comes into effect. In this case, the RSA process is generally the same as in Section 4.1 and Figure 1, but it does not have to tie into the timetable for a new FMP.

Either the SF licensee or the RBT operation can initiate negotiations for an RSA whose provisions would be incorporated into an existing FMP, by following Step 1 or Step 4 respectively, and making appropriate changes to the initial letter. However, if the other party is not willing to negotiate, the consequences described in Section 5.7 do not apply. Step 7, the submission of an RSA to MNR, should be accompanied by a request to amend the current FMP. This request should also indicate the date on which the proposed amendment would come into effect.

Either party to an RSA has the right to request on its own an amendment to an FMP at any time, as described in Section 5.2 of the *Forest Management Planning Manual*. However, it will normally be in that party's best interest to work with the other party, within the RSA process.

4.3 The RSA and the Forest Management Plan

You have negotiated and signed an RSA and forwarded it to MNR. The provisions proposed to be included in the FMP have stood up to public scrutiny and MNR review, and MNR has approved them for inclusion. How do they get incorporated into the FMP?

The provisions that directly affect the FMP should be incorporated into the body of the FMP and its supplementary documentation in the way prescribed by the *Forest Management Planning Manual*.

- The FMP must in any case include maps of selected 20 year primary road corridors, and selected five year secondary road corridors. If the RSA process resulted in any changes, the maps will reflect them.

- The supplementary documentation accompanying the FMP must in any case include maps of a wide variety of forest values, including a map of ***tourism values*** (see Section 5.2). If the RSA process resulted in any changes, the tourism values map will reflect them.

- If a ***tourism business interest map*** (see Section 5.2) was also prepared, and if the RBT operation wishes to forward it to MNR, it will be included in the supplementary documentation.

- If the RSA process resulted in the identification of new tourism values that will be affected by proposed forest operations, then new ***areas of concern*** (see Section 5.3) will be added to the relevant tables and maps in the FMP, and to the area of concern prescription forms and the stand listings in the supplementary documentation.

- The RSA's ***forest management prescriptions*** (including road use management strategies, see Section 5.3) to protect tourism values, in new areas of concern as well as in areas of concern already identified, will be added to the relevant tables and maps in the FMP, and to the area of concern prescription forms, road corridor forms, and stand listings in the supplementary documentation.

The introduction to the FMP should say that on Y Date, 200x, an RSA was signed for RSA area XXX by parties A and B, and that its relevant provisions were incorporated into the FMP. If MNR does not approve as part of an FMP some or all of the provisions proposed by an RSA, some explanation of MNR's reasons for decision will be included in the supplementary documentation.

As long as they meet the above requirements, the plan author and MNR will decide on the details of how the RSA is translated into the FMP and its supplementary documentation.

Also, whether or not MNR has approved any RSA provisions as part of an FMP, **every FMP . . . [must] include a statement confirming the commitment of part of the FMP to maintain the viability of the tourism industry by protecting tourism values in the [FMP] process through the application of the [*Tourism Guidelines*] and the use of RSAs as one method of protecting and sustaining these values**. ("Commitment *of* part of the FMP" is a typographical error; it appears that the parties intended the MoU to read, "commitment *as* part" or "commitment *on the* part".) The training that MNR provides for key FMP planning team members will discuss how to best incorporate this requirement into plan objectives consistent with the *Forest Management Planning Manual*.

5 How to Negotiate an RSA

5.1 What Information Should Be on the Table?

When negotiations begin, the following should be available to the parties.

- This Guide, and the *Tourism Guidelines*.
- MNR will provide its current tourism values map (see Section 5.2), and the FMP terms of reference as soon as they are completed. MNR will also use this opportunity to remind the parties that they are urged to request a scoping meeting with the Ministry (see Section 4.1, Step 6).
- The SF licensee will bring the ***best available information on anticipated 20 year primary and five year secondary road corridors*** (see Section 4.1, Step 1).
- The SF licensee and the RBT operation should bring as much information as they are prepared to share on their existing and desired operations, that will help them better understand each other's present realities and future plans. For example, an RBT operation might provide videos, photos, site maps/plans, brochures, and relevant visitation, harvest, and revenue data.

It's often a good idea for the parties to meet in the field, to get to know each other's businesses better, and explore and examine the prospective areas of concern, sometime before or during their more formal discussions. In the words of the *Tourism Guidelines*, "it is much easier to understand the other fellow's point of view when you spend a day with him in the forest".

5.2 How are the Tourism Values Map and Tourism Business Interest Map Developed?

"Criteria for Mapping Tourism Values" (see Appendix 3) defines a *tourism value* as a resource feature that is within the management unit, that is important to a tourism activity or experience in which tourists participate, and that can be mapped. Ultimately, it is tourists who define a tourism value. Once a tourism value is defined on a map, and if forest operations are being proposed that could affect that value, prescriptions are developed for the *area of concern* that is associated with the protection of that value (or a collection of values that have an affinity for each other). *Areas of concern* are defined in Section 5.3.

MNR is responsible for maintaining an information base on Ontario's Crown land and resource values (the Natural Resource Values Information System, or NRVIS, data base) that will be useful to and respected by Crown land and resource users and the general public. In this role, MNR will help the RSA parties to the best of its ability, and will make the final decisions as to what tourism values should be mapped in the NRVIS data base for RSA and FMP purposes.

Step 1

MNR provides to the negotiating parties a ***tourism values*** map for the management unit, showing all existing information in the NRVIS data base that falls within the categories listed in "Criteria for Mapping Tourism Values". Before forwarding this map, MNR will review it with MTCR.

Step 2

The RBT operation identifies any additional tourism values that it believes are consistent with "Criteria for Mapping Tourism Values", contribute to its own business, and need protection over the 20 year period of the FMP, as well as any corrections or deletions.

Step 3

The SF licensee reviews the additions and changes proposed by the RBT operation.

Step 4

If the SF licensee and RBT operation do not at first agree on proposed additions and changes to the map, they negotiate until they reach agreement, and forward the agreed additions and changes to the MNR district manager. If they cannot agree, they advise the MNR district manager.

Step 5

If the parties agree on the proposed additions and changes, MNR reviews them, and approves or modifies them based on "Criteria for Mapping Tourism Values". If the parties cannot agree, the district manager or her designate hears the parties' views and makes a final decision. The confirmed additions and changes will be incorporated into the final tourism values map in the supplementary documentation to the FMP.

Step 6

The parties identify on the RSA map (see Section 3.2) all tourism values that contribute to the RBT operation, whether they were on the map originally provided by MNR or added in the previous steps.

* * *

The RBT operation may also choose to prepare a ***tourism business interest map***, individually or jointly with other operations. Any such map will be included in the supplementary documentation to the FMP if the RBT operation chooses to forward it to the MNR district manager. However, this does not in any way represent MNR approval of the map or MNR endorsement of any land use designation shown.

A *tourism business interest map* shows those parts (or all) of a management unit that the RBT operation(s) preparing it consider to be important for their short and long term business interests. "Issue Resolution for Mapping Tourism Values" also intended that this map could include tourism values that the RBT operation(s) believe are important but that MNR does not believe are consistent with "Criteria for Mapping Tourism Values".

5 How to Negotiate an RSA

5.1 What Information Should Be on the Table?

When negotiations begin, the following should be available to the parties.

- This Guide, and the *Tourism Guidelines*.
- MNR will provide its current tourism values map (see Section 5.2), and the FMP terms of reference as soon as they are completed. MNR will also use this opportunity to remind the parties that they are urged to request a scoping meeting with the Ministry (see Section 4.1, Step 6).
- The SF licensee will bring the ***best available information on anticipated 20 year primary and five year secondary road corridors*** (see Section 4.1, Step 1).
- The SF licensee and the RBT operation should bring as much information as they are prepared to share on their existing and desired operations, that will help them better understand each other's present realities and future plans. For example, an RBT operation might provide videos, photos, site maps/plans, brochures, and relevant visitation, harvest, and revenue data.

It's often a good idea for the parties to meet in the field, to get to know each other's businesses better, and explore and examine the prospective areas of concern, sometime before or during their more formal discussions. In the words of the *Tourism Guidelines*, "it is much easier to understand the other fellow's point of view when you spend a day with him in the forest".

5.2 How are the Tourism Values Map and Tourism Business Interest Map Developed?

"Criteria for Mapping Tourism Values" (see Appendix 3) defines a *tourism value* as a resource feature that is within the management unit, that is important to a tourism activity or experience in which tourists participate, and that can be mapped. Ultimately, it is tourists who define a tourism value. Once a tourism value is defined on a map, and if forest operations are being proposed that could affect that value, prescriptions are developed for the *area of concern* that is associated with the protection of that value (or a collection of values that have an affinity for each other). *Areas of concern* are defined in Section 5.3.

MNR is responsible for maintaining an information base on Ontario's Crown land and resource values (the Natural Resource Values Information System, or NRVIS, data base) that will be useful to and respected by Crown land and resource users and the general public. In this role, MNR will help the RSA parties to the best of its ability, and will make the final decisions as to what tourism values should be mapped in the NRVIS data base for RSA and FMP purposes.

Step 1

MNR provides to the negotiating parties a ***tourism values*** map for the management unit, showing all existing information in the NRVIS data base that falls within the categories listed in "Criteria for Mapping Tourism Values". Before forwarding this map, MNR will review it with MTCR.

Step 2

The RBT operation identifies any additional tourism values that it believes are consistent with "Criteria for Mapping Tourism Values", contribute to its own business, and need protection over the 20 year period of the FMP, as well as any corrections or deletions.

Step 3

The SF licensee reviews the additions and changes proposed by the RBT operation.

Step 4

If the SF licensee and RBT operation do not at first agree on proposed additions and changes to the map, they negotiate until they reach agreement, and forward the agreed additions and changes to the MNR district manager. If they cannot agree, they advise the MNR district manager.

Step 5

If the parties agree on the proposed additions and changes, MNR reviews them, and approves or modifies them based on "Criteria for Mapping Tourism Values". If the parties cannot agree, the district manager or her designate hears the parties' views and makes a final decision. The confirmed additions and changes will be incorporated into the final tourism values map in the supplementary documentation to the FMP.

Step 6

The parties identify on the RSA map (see Section 3.2) all tourism values that contribute to the RBT operation, whether they were on the map originally provided by MNR or added in the previous steps.

* * *

The RBT operation may also choose to prepare a ***tourism business interest map***, individually or jointly with other operations. Any such map will be included in the supplementary documentation to the FMP if the RBT operation chooses to forward it to the MNR district manager. However, this does not in any way represent MNR approval of the map or MNR endorsement of any land use designation shown.

A *tourism business interest map* shows those parts (or all) of a management unit that the RBT operation(s) preparing it consider to be important for their short and long term business interests. "Issue Resolution for Mapping Tourism Values" also intended that this map could include tourism values that the RBT operation(s) believe are important but that MNR does not believe are consistent with "Criteria for Mapping Tourism Values".

5.3 How are Forest Management Prescriptions Developed?

Once a tourism value has been identified and confirmed by MNR, and if forest operations are proposed that could affect that value, it becomes an ***area of concern*** for forest management planning. **Parties agree in RSA negotiations to apply *[forest management] prescriptions*** to areas of concern **to protect specific tourism values.**

The *Forest Management Planning Manual* defines an ***area of concern*** as an area of value to users/uses which may be affected by forest management activities, and that requires modifications to those operations usually prescribed.

A ***forest management prescription***, referred to in the *Crown Forest Sustainability Act, 1994* as a forest operations prescription, is a specific set of integrated activities prescribed by an FMP for a particular forest site. The MoU and the *Tourism Guidelines* clearly intend that forest management prescriptions may:

- cover all aspects of forest operations, including forest harvesting, renewal, and maintenance,
- include forest road location and ***road use management strategies.***

Prescriptions may dictate when as well as how operations and related activities take place.

The *Forest Management Planning Manual* defines a ***road use management strategy*** as a statement outlining the purpose and description of, and defining the roles and responsibilities related to, the use, maintenance, use control, abandonment, and monitoring of roads on Crown land.

The [*Tourism Guidelines*] . . . include a list of tools available to address . . . Tourism and Forestry interests . . . and provide guidance in creating the [forest management] prescriptions in a particular RSA. However, with the exceptions below and in Section 3.9, the parties do not have to rely on the *Guidelines* in developing prescriptions.

Where the [RBT operation] has identified remoteness as a value to be protected, then the prescriptions identified in the *Tourism Guidelines* shall be applied to maintain a *reasonably similar level of remoteness* as existed prior to forest management operations. The prescriptions to be considered will include, but are not limited to: no harvest areas; *functionally roadless* strategies; modified operations.

A ***reasonably similar level of remoteness*** is where the tourism value(s) involved have the same level of remoteness on the ***ending benchmark date*** as on the ***beginning benchmark date***. The ***beginning benchmark date*** is a date agreed by the parties. It may be the beginning date of the five year term of the next FMP, or some other date, but may not be earlier than the date the RSA is signed. The ***ending benchmark date*** is any later date agreed by the parties. It may be the ending date of the FMP term, or some other date. Remoteness refers to accessibility; in other words, access to the tourism value(s) should be limited to the same methods, and be similarly easy or difficult, on the ending date as it was on the beginning date.

In *functionally roadless* areas, roads are generally discouraged, and may be prohibited except for forest management purposes. Any roads permitted are generally constructed to the lowest possible standard (for example, tertiary roads or winter roads), located to facilitate decommissioning, and/or restricted to specific activities and uses. Functionally roadless areas would normally be maintained to provide for, and promote, a tourism value or values that might be negatively affected by permanent, public road access.

5.4 What Kind of Help Do I Need?

As the principal representative of an SF licensee or RBT operation, what is most important is the attitude and outlook you yourself bring to the table. This Guide is not a how-to course in successful negotiation, but there are many resources out there you can use.

You can take a course, read a book, or look up Internet resources on the art of effective, successful negotiation. You can also contact, directly or through your local MNR office, MNR's RSA Alternative Dispute Resolution Program Advisor, who can provide you with an up to date list of resources on negotiation.

5.5 What Role Do Other Stakeholders Play?

Some of the MoU's provisions, and other Guide recommendations such as scoping meetings (see Section 4.1, Step 6), will result in the Ontario Government being advised that the parties are preparing to negotiate. Also, MNR's role as custodian of information on Crown resources means it must be involved in tourism values mapping as described in Section 5.2. With these exceptions, the MoU does not require the parties to involve anyone else in their negotiations, or advise anyone of the results until they forward a signed RSA to MNR. However, the MoU does not prohibit the parties from involving other stakeholders in or informing them of negotiations; it only prohibits those other stakeholders from being parties to the RSA.

A confidential approach may have these advantages for the parties:

- It may be easier to keep proprietary business information confidential.
- The businesses involved do not have to show their hands any earlier than necessary to competitors who aren't at the table.
- The RSA process may go faster.

On the other hand, a consultative approach may have some big advantages. MNR's eventual decision as to whether to include RSA proposals in the FMP will rely heavily on local citizens committee and other public response during the FMP process, and especially on the views of potentially affected stakeholders such as Aboriginal communities, private property owners, Crown land disposition holders, and other land and resource users. If the RSA proposals are controversial with other stakeholders, but those stakeholders feel they have been consulted and respected and that their concerns have been fairly and reasonably considered beforehand, MNR will be more likely to approve the RSA proposals as part of an FMP, than if the RSA appears out of the blue at the first Information Centre. In the same way, early consultation with MNR staff may pay off too.

5.3 How are Forest Management Prescriptions Developed?

Once a tourism value has been identified and confirmed by MNR, and if forest operations are proposed that could affect that value, it becomes an ***area of concern*** for forest management planning. **Parties agree in RSA negotiations to apply *[forest management] prescriptions*** to areas of concern **to protect specific tourism values.**

The *Forest Management Planning Manual* defines an ***area of concern*** as an area of value to users/uses which may be affected by forest management activities, and that requires modifications to those operations usually prescribed.

A ***forest management prescription***, referred to in the *Crown Forest Sustainability Act, 1994* as a forest operations prescription, is a specific set of integrated activities prescribed by an FMP for a particular forest site. The MoU and the *Tourism Guidelines* clearly intend that forest management prescriptions may:

- cover all aspects of forest operations, including forest harvesting, renewal, and maintenance,
- include forest road location and ***road use management strategies.***

Prescriptions may dictate when as well as how operations and related activities take place.

The *Forest Management Planning Manual* defines a ***road use management strategy*** as a statement outlining the purpose and description of, and defining the roles and responsibilities related to, the use, maintenance, use control, abandonment, and monitoring of roads on Crown land.

The [*Tourism Guidelines*] . . . include a list of tools available to address . . . Tourism and Forestry interests . . . and provide guidance in creating the [forest management] prescriptions in a particular RSA. However, with the exceptions below and in Section 3.9, the parties do not have to rely on the *Guidelines* in developing prescriptions.

Where the [RBT operation] has identified remoteness as a value to be protected, then the prescriptions identified in the *Tourism Guidelines* shall be applied to maintain a *reasonably similar level of remoteness* as existed prior to forest management operations. The prescriptions to be considered will include, but are not limited to: no harvest areas; *functionally roadless* strategies; modified operations.

A ***reasonably similar level of remoteness*** is where the tourism value(s) involved have the same level of remoteness on the ***ending benchmark date*** as on the ***beginning benchmark date***. The ***beginning benchmark date*** is a date agreed by the parties. It may be the beginning date of the five year term of the next FMP, or some other date, but may not be earlier than the date the RSA is signed. The ***ending benchmark date*** is any later date agreed by the parties. It may be the ending date of the FMP term, or some other date. Remoteness refers to accessibility; in other words, access to the tourism value(s) should be limited to the same methods, and be similarly easy or difficult, on the ending date as it was on the beginning date.

In *functionally roadless* areas, roads are generally discouraged, and may be prohibited except for forest management purposes. Any roads permitted are generally constructed to the lowest possible standard (for example, tertiary roads or winter roads), located to facilitate decommissioning, and/or restricted to specific activities and uses. Functionally roadless areas would normally be maintained to provide for, and promote, ... tourism value or values that might be negatively affected by permanent, public road access.

5.4 What Kind of Help Do I Need?

As the principal representative of an SF licensee or RBT operation, what is most important is the attitude and outlook you yourself bring to the table. This Guide is not a how-to course in successful negotiation, but there are many resources out there you can use.

You can take a course, read a book, or look up Internet resources on the art of effective, successful negotiation. You can also contact, directly or through your local MNR office, MNR's RSA Alternative Dispute Resolution Program Advisor, who can provide you with an up to date list of resources on negotiation.

5.5 What Role Do Other Stakeholders Play?

Some of the MoU's provisions, and other Guide recommendations such as scoping meetings (see Section 4.1, Step 6), will result in the Ontario Government being advised that the parties are preparing to negotiate. Also, MNR's role as custodian of information on Crown resources means it must be involved in tourism values mapping as described in Section 5.2. With these exceptions, the MoU does not require the parties to involve anyone else in their negotiations, or advise anyone of the results until they forward a signed RSA to MNR. However, the MoU does not prohibit the parties from involving other stakeholders in or informing them of negotiations; it only prohibits those other stakeholders from being parties to the RSA.

A confidential approach may have these advantages for the parties:

- It may be easier to keep proprietary business information confidential.
- The businesses involved do not have to show their hands any earlier than necessary to competitors who aren't at the table.
- The RSA process may go faster.

On the other hand, a consultative approach may have some big advantages. MNR's eventual decision as to whether to include RSA proposals in the FMP will rely heavily on local citizens committee and other public response during the FMP process, and especially on the views of potentially affected stakeholders such as Aboriginal communities, private property owners, Crown land disposition holders, and other land and resource users. If the RSA proposals are controversial with other stakeholders, but those stakeholders feel they have been consulted and respected and that their concerns have been fairly and reasonably considered beforehand, MNR will be more likely to approve the RSA proposals as part of an FMP, than if the RSA appears out of the blue at the first Information Centre. In the same way, early consultation with MNR staff may pay off too.

Unless considerations of confidentiality and speed are overwhelming, consult with your local MNR office, and key potentially affected stakeholders, in developing your RSA. Seek MNR's advice on which stakeholders to consult and how best to do it. "Early consultation can save time and money and can result in early dispute resolution." – Ministry of Municipal Affairs and Housing, *The Land Use Planning System in Ontario. Achieving the Vision*, 1998.

5.6 What Role Does Government Play?

The RSA process is a business-to-business relationship, but Ontario Government staff can and will help the parties in several important ways. These are mentioned throughout the *Guide* but are summarized here for convenience. Specific MNR and MTCR roles are described in the sections referred to. Generally, MNR will take the lead and MTCR will advise and assist as appropriate.

Government's role includes:

- confirming the eligibility of RBT operations and SF licensees (Section 3.1),
- helping confirm the negotiating intentions of RBT operations and SF licensees (Section 4.1),
- providing a scoping meeting with the negotiating parties if requested (Section 4.1),
- providing the negotiating parties with a tourism values map, and determining whether the parties' proposed changes to those values are acceptable (Section 5.2),
- receiving an RSA from the parties for inclusion in the FMP process (Section 4.1; see also Appendix 4),
- approving as part of an FMP the relevant provisions proposed in an RSA, and explaining the Government's reasons for not approving provisions (Section 3.5),
- determining along with the plan author how to best incorporate the approved provisions in the FMP and its supplementary documentation (Section 4.3),
- managing the dispute resolution process and providing dispute resolution services (Section 6),
- determining whether an RSA resulting from non-binding arbitration or FMP process remedies constitutes protection in excess of normal application of the *Tourism Guidelines*, and ordering compensation (Section 6),
- monitoring and compliance (Section 3.6),
- in general, providing advice to the parties and acting as resource people whenever asked.

5.7 What Happens if a Party is Not Willing to Negotiate?

If an RBT operation is ***not willing to negotiate*** (see Section 4.1, Step 3), then:

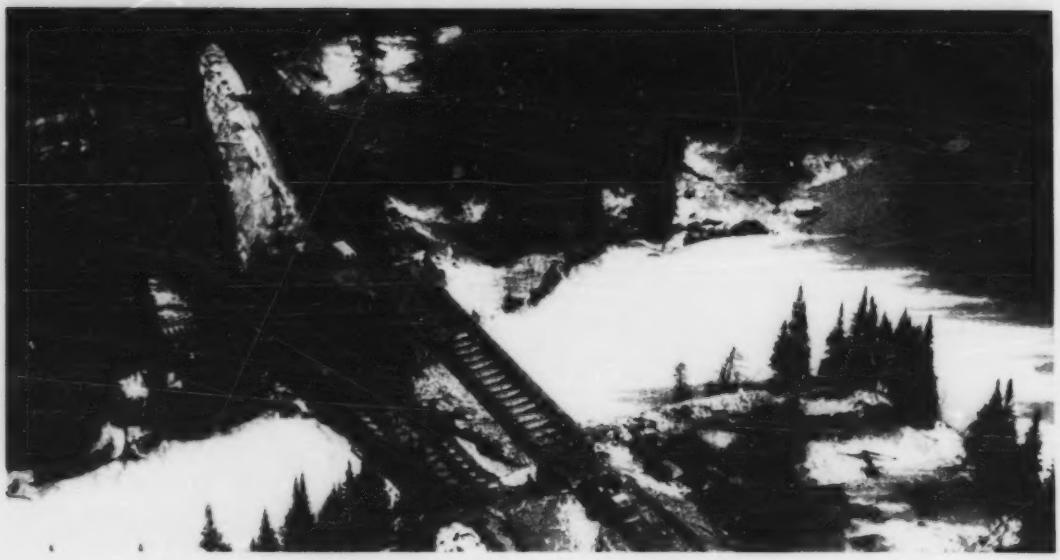
- **The [SF licensee] may presume that the [RBT operation's] business interests are protected by application of the *[FMP guidelines]*,** and **will be able to complete operations in accordance with [those guidelines].**
- If the RBT operation later objects to provisions proposed to be included in the FMP that other RBT operations agreed to in negotiations, or argues that the proposed FMP will not adequately protect its interests, **MNR will consider the RBT's failure to seek negotiations in its approval of [the] FMP.**

The MoU refers to "ecological guidelines". To avoid confusion, as many of the guidelines in question are not primarily ecological, this *Guide* refers instead to *FMP guidelines*. These include all applicable implementation guidelines and manuals produced by MNR and listed in Appendix A of the *Forest Operations and Silviculture Manual* (*Moose Habitat Guidelines*, *Fish Habitat Guidelines*, *Access Roads and Water Crossing Guidelines*, etc.). However, for the purposes of the MoU, "FMP guidelines" does not include the *Tourism Guidelines*.

If an SF licensee is ***not willing to negotiate*** (see Section 4.1, Step 5), then:

- either **MNR will . . . not approve an FMP for that [management unit],**
- or MNR **will not approve the commencement of harvesting operations**, at least those operations that could affect tourism values of concern to the RBT operation(s) the licensee refused to negotiate with.

If an RBT operation or SF licensee is not willing to negotiate an RSA that would seek to amend an existing FMP (see Section 4.2), these consequences do not apply.



5.7 What Happens if a Party is Not Willing to Negotiate?

If an RBT operation is ***not willing to negotiate*** (see Section 4.1, Step 3), then:

- **The [SF licensee] may presume that the [RBT operation's] business interests are protected by application of the *[FMP guidelines]*,** and **will be able to complete operations in accordance with [those guidelines].**
- If the RBT operation later objects to provisions proposed to be included in the FMP that other RBT operations agreed to in negotiations, or argues that the proposed FMP will not adequately protect its interests, **MNR will consider the RBT's failure to seek negotiations in its approval of [the] FMP.**

The MoU refers to "ecological guidelines". To avoid confusion, as many of the guidelines in question are not primarily ecological, this *Guide* refers instead to *FMP guidelines*. These include all applicable implementation guidelines and manuals produced by MNR and listed in Appendix A of the *Forest Operations and Silviculture Manual* (*Moose Habitat Guidelines*, *Fish Habitat Guidelines*, *Access Roads and Water Crossing Guidelines*, etc.). However, for the purposes of the MoU, "FMP guidelines" does not include the *Tourism Guidelines*.

If an SF licensee is ***not willing to negotiate*** (see Section 4.1, Step 5), then:

- either **MNR will . . . not approve an FMP for that [management unit].**
- or MNR **will not approve the commencement of harvesting operations**, at least those operations that could affect tourism values of concern to the RBT operation(s) the licensee refused to negotiate with.

If an RBT operation or SF licensee is not willing to negotiate an RSA that would seek to amend an existing FMP (see Section 4.2), these consequences do not apply.

6 What if Negotiations Don't Result in an RSA?

If negotiations don't result in an RSA, the parties are free to quit the RSA process. However, if the parties want to keep trying to reach agreement on proposals to be included in an FMP, then the RSA dispute resolution process is available to help them along. No party has to use this service and there are no consequences for parties who don't use it.

This section of the Guide applies only to those provisions of an RSA proposed to be included in an FMP. If negotiations fail over non-FMP provisions only, it's a private matter between the parties and can be resolved (or not resolved) however they want.

Figure 2 shows the steps of the RSA dispute resolution process, and how they relate to the Issue Resolution Procedure and "bump-up" request remedies that are available for resolving disputes within the FMP process. The following paragraphs provide more details on the boxes in the RSA process. For more details on the FMP process remedies, see Step 5 and the *Forest Management Planning Manual*.

If you become involved in RSA dispute resolution, you may want to contact MNR's RSA Alternative Dispute Resolution Program Advisor, directly or through your local MNR office. The Program Advisor can guide you through the dispute resolution process and provide information on how to make mediation and arbitration work for you.

Step 1

If the parties are unable to negotiate an RSA, then they may seek *mediation*. The SF licensee and RBT operation submit their request to the MNR district manager, by completing and submitting a Request for Mediation form available from MNR.

Mediation **is "assisted negotiation", in which an impartial mediator helps the parties to resolve their dispute by facilitating communication between them about their needs and interests. The mediator may make suggestions, but does not impose or recommend a solution; in a successful mediation, the parties find the solution themselves.**

Step 2

- MNR ensures that the **mediation will be conducted within 15 days of** receiving **the request**. If MNR **determines that a mediation is impractical or impossible within 15 days** of receiving the request, **then no mediation will be conducted unless the parties otherwise agree**. MNR may determine that mediation is impractical or impossible within 15 days because:
  - despite submitting a Request for Mediation form, either or both parties are not willing to participate, in which case mediation does not proceed,
  - of the mediator's and/or the parties' schedules; however, if the mediator and parties agree to delay mediation to a mutually convenient date, then it will still proceed.

6 What if Negotiations Don't Result in an RSA?

If negotiations don't result in an RSA, the parties are free to quit the RSA process. However, if the parties want to keep trying to reach agreement on proposals to be included in an FMP, then the RSA dispute resolution process is available to help them along. No party has to use this service and there are no consequences for parties who don't use it.

This section of the Guide applies only to those provisions of an RSA proposed to be included in an FMP. If negotiations fail over non-FMP provisions only, it's a private matter between the parties and can be resolved (or not resolved) however they want.

Figure 2 shows the steps of the RSA dispute resolution process, and how they relate to the Issue Resolution Procedure and "bump-up" request remedies that are available for resolving disputes within the FMP process. The following paragraphs provide more details on the boxes in the RSA process. For more details on the FMP process remedies, see Step 5 and the *Forest Management Planning Manual*.

If you become involved in RSA dispute resolution, you may want to contact MNR's RSA Alternative Dispute Resolution Program Advisor, directly or through your local MNR office. The Program Advisor can guide you through the dispute resolution process and provide information on how to make mediation and arbitration work for you.

Step 1

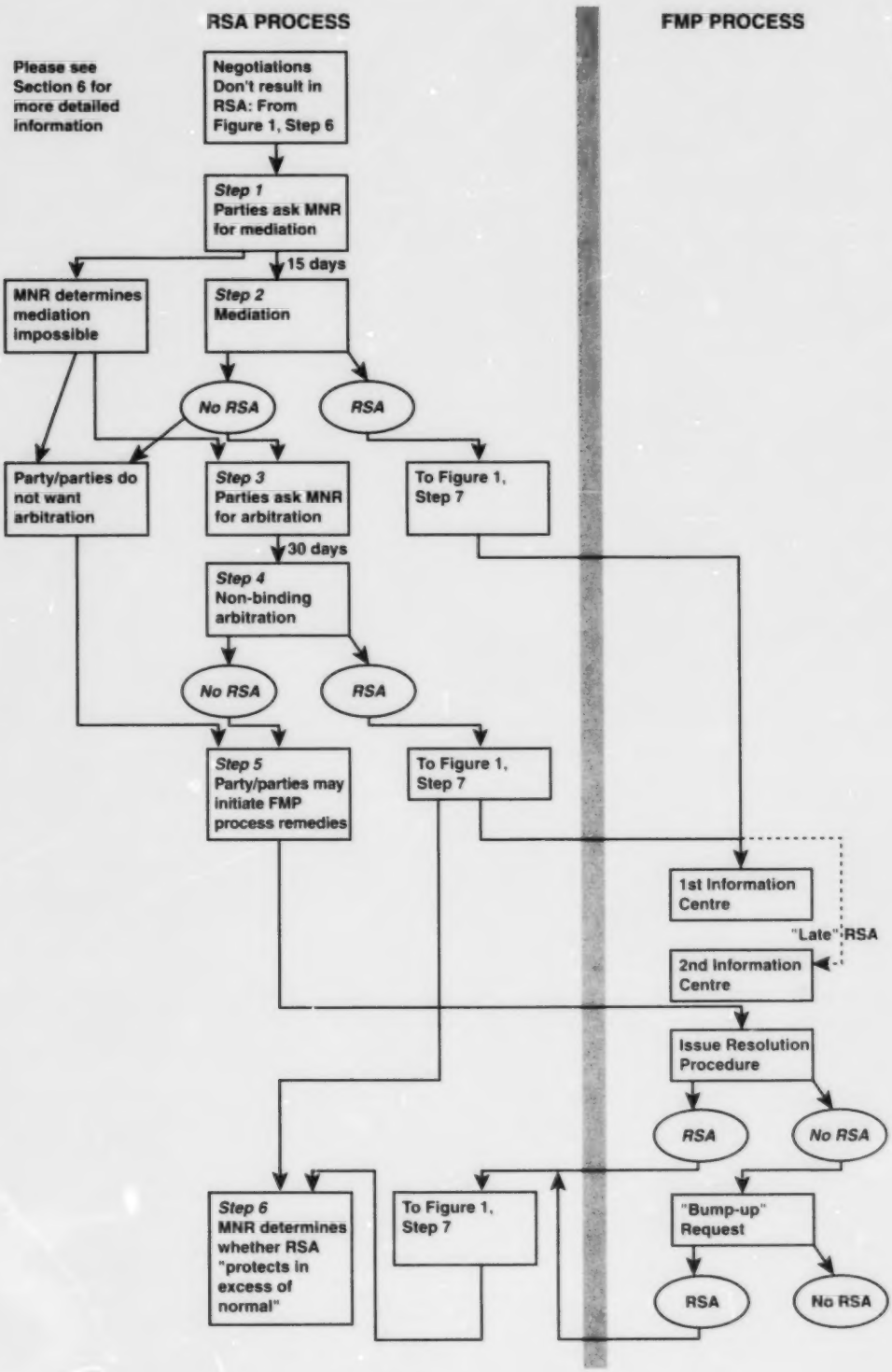
If the parties are unable to negotiate an RSA, then they may seek *mediation*. The SF licensee and RBT operation submit their request to the MNR district manager, by completing and submitting a Request for Mediation form available from MNR.

Mediation **is "assisted negotiation", in which an impartial mediator helps the parties to resolve their dispute by facilitating communication between them about their needs and interests. The mediator may make suggestions, but does not impose or recommend a solution; in a successful mediation, the parties find the solution themselves.**

Step 2

- MNR ensures that the **mediation will be conducted within 15 days of** receiving **the request**. If MNR **determines that a mediation is impractical or impossible within 15 days** of receiving the request, **then no mediation will be conducted unless the parties otherwise agree**. MNR may determine that mediation is impractical or impossible within 15 days because:
  - despite submitting a Request for Mediation form, either or both parties are not willing to participate, in which case mediation does not proceed,
  - of the mediator's and/or the parties' schedules; however, if the mediator and parties agree to delay mediation to a mutually convenient date, then it will still proceed.

igure 2 The RSA Dispute Resolution Process



Please see Section 4.1 for more detailed information.

- If mediation does not proceed for the above reasons, the parties may request non-binding arbitration (Step 3). If either or both parties are not willing to participate in arbitration, either party may proceed to the FMP process remedies (Step 5).

- The parties select the mediator from the ***dispute resolution professionals roster***, and MNR pays the mediator's reasonable costs except as indicated below. If the parties cannot agree on a mediator, MNR will randomly select one from the roster.

The *dispute resolution professionals roster* is a list of independent professional mediators and arbitrators. The list is developed by MNR, the Ministry of the Attorney General, and a representative of private sector professionals, and approved by representatives of the RBT and forest industries. These professionals are categorized by MNR administrative region, but parties are free to select professionals from either inside or outside their region.

- The MNR district manager may decide that the mediator and the parties should be provided beforehand with an MNR staff report. The district manager would ask each party to provide an outline of the situation. Staff would prepare a report using this material (if provided) and file information, summarizing the process to date, the parties involved, and the issues outstanding, but offering no opinions.

- If the parties and MNR consider it appropriate, MNR staff may attend the mediation session. Staff would act as resource people, providing advice and assistance on possible solutions.

- **The mediation will last a maximum of one day unless otherwise agreed by [the] parties.** However, if mediation is extended, MNR may require the parties to contribute to the mediator's additional costs.

- **Mediation is confidential, and any offers, options or discussions regarding potential settlements will not be disclosed in or used as the basis for a decision in any subsequent proceeding.** Of course, if the mediation results in an RSA, the provisions proposed to be included in an FMP become public.

- If the mediation succeeds, the parties sign an RSA – see Step 7 in Section 4.1, and Figure 1.

Step 3

If the mediation doesn't result in an RSA, the SF licensee and RBT operation may submit a request for ***non-binding arbitration*** to the MNR district manager, by completing and submitting a Request for Non-Binding Arbitration form available from MNR.

In *arbitration*, an impartial arbitrator hears evidence presented by the parties about their dispute and issues a decision. The RSA process uses *non-binding arbitration*, in which the arbitrator hears the evidence and issues a non-binding recommendation to the parties, with a copy to MNR.

If either or both parties are not willing to participate, arbitration does not proceed, and either party may proceed to the FMP process remedies (Step 5).

Step 4

- MNR ensures that the **arbitration will be completed within 30 days of** receiving **the request**.

- The parties select the arbitrator from the ***dispute resolution professionals roster***. If the parties cannot agree on an arbitrator, MNR will randomly select one from the roster.

- **Each party will pay . . . MNR $500 towards the cost of arbitration**. MNR pays the rest of the arbitrator's reasonable costs. However, MNR is not generally able to keep and use funds paid to it. Therefore, MNR may direct the parties to provide it with cheques payable to the arbitrator, which it will forward to the arbitrator.

- **The maximum duration of the arbitration shall be two days.**

- **Where the dispute affects a [water body] where timber harvesting practices are by clear-cutting (as defined in . . . *Tourism Guidelines*), the arbitrator shall make a [recommendation] based on the principles of [the MoU] in order to allocate 50% of the *Mutual Allocation Zone* to [the SF licensee and 50% to the RBT operation]. Each party must define for and present to the arbitrator . . . a map and rationale showing one half of the area in the zone to be designated as a no-cut reserve, and one half of the area in the zone to be designated as harvest, so long as no zone designation contravenes** any provision of the ***[FMP guidelines]*** (defined in Section 5.7) that **[defines] the minimum distance from shoreline available for harvest**. As well, the parties must include in their proposed no-cut reserves all areas that the ***[FMP guidelines]*** would require not be cut in any case.

The *Mutual Allocation Zone* is ... a zone extending 200 m from the shoreline of the [water body] and within the area defined as the five year timber allocation. "Criteria for Mapping Tourism Values" defines the shoreline as the ordinary high water mark.

- **For all other issues the arbitrator shall [recommend] as he or she considers just and appropriate in accordance with . . . the principles [of the MoU]; the [*FMP guidelines* and *Tourism Guidelines*]; and the map of [tourism] values and [*best available information on anticipated 20 year primary and five year secondary road corridors*]** (defined in Section 4.1, Step 1).

- The MoU says that **the arbitrator may award costs to a maximum of . . . $1,000**, in addition to payment towards the cost of arbitration, **against an unreasonable party, to be paid to the successful party**.

Before entering arbitration, make sure that you have signed with the other party a document agreeing to the above terms.

- If mediation does not proceed for the above reasons, the parties may request non-binding arbitration (Step 3). If either or both parties are not willing to participate in arbitration, either party may proceed to the FMP process remedies (Step 5).

- The parties select the mediator from the ***dispute resolution professionals roster***, and MNR pays the mediator's reasonable costs except as indicated below. If the parties cannot agree on a mediator, MNR will randomly select one from the roster.

The *dispute resolution professionals roster* is a list of independent professional mediators and arbitrators. The list is developed by MNR, the Ministry of the Attorney General, and a representative of private sector professionals, and approved by representatives of the RBT and forest industries. These professionals are categorized by MNR administrative region, but parties are free to select professionals from either inside or outside their region.

- The MNR district manager may decide that the mediator and the parties should be provided beforehand with an MNR staff report. The district manager would ask each party to provide an outline of the situation. Staff would prepare a report using this material (if provided) and file information, summarizing the process to date, the parties involved, and the issues outstanding, but offering no opinions.

- If the parties and MNR consider it appropriate, MNR staff may attend the mediation session. Staff would act as resource people, providing advice and assistance on possible solutions.

- **The mediation will last a maximum of one day unless otherwise agreed by [the] parties.** However, if mediation is extended, MNR may require the parties to contribute to the mediator's additional costs.

- **Mediation is confidential, and any offers, options or discussions regarding potential settlements will not be disclosed in or used as the basis for a decision in any subsequent proceeding.** Of course, if the mediation results in an RSA, the provisions proposed to be included in an FMP become public.

- If the mediation succeeds, the parties sign an RSA – see Step 7 in Section 4.1, and Figure 1.

Step 3

If the mediation doesn't result in an RSA, the SF licensee and RBT operation may submit a request for ***non-binding arbitration*** to the MNR district manager, by completing and submitting a Request for Non-Binding Arbitration form available from MNR.

In *arbitration*, an impartial arbitrator hears evidence presented by the parties about their dispute and issues a decision. The RSA process uses *non-binding arbitration*, in which the arbitrator hears the evidence and issues a non-binding recommendation to the parties, with a copy to MNR.

If either or both parties are not willing to participate, arbitration does not proceed, and either party may proceed to the FMP process remedies (Step 5).

Step 4

- MNR ensures that the **arbitration will be completed within 30 days of** receiving **the request**.

- The parties select the arbitrator from the ***dispute resolution professionals roster***. If the parties cannot agree on an arbitrator, MNR will randomly select one from the roster.

- **Each party will pay . . . MNR $500 towards the cost of arbitration**. MNR pays the rest of the arbitrator's reasonable costs. However, MNR is not generally able to keep and use funds paid to it. Therefore, MNR may direct the parties to provide it with cheques payable to the arbitrator, which it will forward to the arbitrator.

- **The maximum duration of the arbitration shall be two days.**

- **Where the dispute affects a [water body] where timber harvesting practices are by clear-cutting (as defined in . . . *Tourism Guidelines*), the arbitrator shall make a [recommendation] based on the principles of [the MoU] in order to allocate 50% of the *Mutual Allocation Zone* to [the SF licensee and 50% to the RBT operation]. Each party must define for and present to the arbitrator . . . a map and rationale showing one half of the area in the zone to be designated as a no-cut reserve, and one half of the area in the zone to be designated as harvest, so long as no zone designation contravenes** any provision of the ***[FMP guidelines]*** (defined in Section 5.7) that **[defines] the minimum distance from shoreline available for harvest**. As well, the parties must include in their proposed no-cut reserves all areas that the ***[FMP guidelines]*** would require not be cut in any case.

The *Mutual Allocation Zone* is ... a zone extending 200 m from the shoreline of the [water body] and within the area defined as the five year timber allocation. "Criteria for Mapping Tourism Values" defines the shoreline as the ordinary high water mark.

- **For all other issues the arbitrator shall [recommend] as he or she considers just and appropriate in accordance with . . . the principles [of the MoU]; the [*FMP guidelines* and *Tourism Guidelines*]; and the map of [tourism] values and [*best available information on anticipated 20 year primary and five year secondary road corridors*]** (defined in Section 4.1, Step 1).

- The MoU says that **the arbitrator may award costs to a maximum of . . . $1,000**, in addition to payment towards the cost of arbitration, **against an unreasonable party, to be paid to the successful party**.

Before entering arbitration, make sure that you have signed with the other party a document agreeing to the above terms.

- If the parties are satisfied with the results of the arbitration, they sign an RSA – see Step 7 in Section 4.1, and Figure 1.

Step 5

- **If the parties are not satisfied with the result of the arbitration,** either party **may then use the other legal remedies available to resolve disputes** in the FMP process, when the appropriate stage of the FMP process is reached:
  - the Issue Resolution Procedure,
  - a "bump-up" request to the Minister of the Environment under the *Environmental Assessment Act*,

  as described in Section 3 of the *Forest Management Planning Manual*.

- Parties do have the legal right to use the FMP process remedies at any earlier point in the RSA process, but it will normally not be in their interest to do so. The MoU intended to strongly discourage a participant in RSA negotiations from using those remedies unless:
  - those negotiations didn't result in an RSA,
  - and the party then participated in mediation and arbitration, or arbitration only, that also didn't result in an RSA.

  Therefore, before beginning the RSA negotiation process, parties may want to agree that they will not use the FMP process remedies unless and until they have exhausted the negotiation, mediation (if applicable), and arbitration processes.

- If the FMP process remedies are used and the parties are satisfied with the results, they sign an RSA – see Step 7 in Section 4.1, and Figure 1.

- Where the parties agree with each other but not with MNR (for example, where MNR decides not to approve as part of an FMP a provision proposed by an RSA), the FMP process remedies are available to the parties and appropriate for them to use.

- Anyone else who is concerned about a provision proposed by an RSA for inclusion in an FMP may use these remedies at any point in the FMP process.

Step 6

- An RSA that is signed as a result of arbitration, or the FMP process remedies in Step 5, is **subject to a determination by . . . MNR, after completion of the . . . FMP, and in light of the final terms of the RSA as included in the FMP. . . . MNR will determine whether there is protection in excess of the normal application of the [*Tourism Guidelines*], whether there is a beneficiary, whether there is a loss or cost to the [SF licensee], and if so, [may] order payment of the amount [of] the cost or losses to the [SF licensee]. In the event [that] MNR determines that the normal application of the [*Tourism Guidelines*] has not been achieved, it may order the payment of compensation to the [RBT operation].**

- MNR (usually the regional director on the advice of the district manager) determines what "normal application of the [*Tourism Guidelines*]" would mean in that particular RSA area. MNR then determines whether the RSA's provisions would result in more or less forest protection than, or the same protection as, "normal application" would. To do this, MNR may need to ask the parties for information about and submissions documenting their expected gains and losses from the RSA's provisions.

- Step 6 does not apply to any RSA concluded by negotiation or mediation.

Step 6 is a result of Term 29 of the *Ontario Forest Accord* agreed to in March 1999 by MNR, forest industry representatives, and the Partnership for Public Lands: "MNR and the forest industry will support the principle that the increased costs and lost volumes incurred by the forest industry as a result of resource (tourism) stewardship agreements which provide tourism protection in excess of that resulting from the normal application of tourism guidelines, will be the basis for calculating a charge to the beneficiary to offset the forest industry's costs or losses."

7 How to Keep Your RSA Working for You

An RSA must include a **commitment to share information** among the parties. This information could include:

- information that the parties might collect to meet gaps identified during the RSA negotiations,
- information that the parties might collect in the future as part of their ongoing operations.

An RSA may also include provisions that, among other things (see also Appendix 2):

- If the RSA is part of a group of overlapping or otherwise related RSAs, establish a **management structure to implement the [RSAs]**.
- Require the parties, individually or through a management structure, to inform other land and resource users about those RSA provisions that could affect them or might otherwise be of interest to them.
- Involve the RBT operation in the monitoring and evaluation of those aspects of the FMP that flow from the RSA (see Section 3.6).
- Require the parties, individually or through the management structure, to carry out their own evaluations of how effective the RSA is in achieving the parties' objectives.

The RSA can't be put in a drawer when the FMP takes effect. It's a continuing commitment by the SF licensee and RBT operation to work together. Like any other relationship, it needs continuing care, consideration, and communication!

8 For More Information

Stephen Harvey, Senior Policy Advisor
Forest Management Branch
Ministry of Natural Resources
70 Foster Drive, suite 400
Sault Ste. Marie P6A 6V5
(705) 945-6713
fax (705) 945-6711
e-mail stephen.harvey@mnr.gov.on.ca

Sergio Buonocore, Coordinator,
Resource-Based Tourism
Ministry of Tourism, Culture and Recreation
615 James St. South, suite 201
Thunder Bay P7E 6P6
(807) 475-1450
fax (807) 475-1765
e-mail sergio.buonocore@omt.gov.on.ca

Gerry Webber, Tourism Advisor
Ministry of Tourism, Culture and Recreation
199 Larch Street, suite 401
Sudbury P3E 6A5
(705) 564-3175
fax (705) 677-4019
e-mail gerry.webber@edt.gov.on.ca

Christine Hansen, Manager, Kenora and Area
Ministry of Northern Development and Mines
810 Robertson Street, suite 104
Kenora P9N 4J2
(807) 468-2938
fax (807) 468-2930
e-mail christine.hansen@ndm.gov.on.ca

Appendix 1

TOURISM AND FORESTRY INDUSTRY MEMORANDUM OF UNDERSTANDING

Purpose:

This Memorandum establishes a framework for negotiating Resource Stewardship Agreements (RSA's) that will allow the Resource-Based Tourism and Forestry industries in Ontario to co-exist and prosper. This memorandum sets the general principles and minimum content for an RSA. The Resource-Based Tourism and Forestry industries in Ontario agree to respect and adhere to this Memorandum, and to negotiate RSA's in good faith. This memorandum is intended to direct RSA negotiations between Sustainable Forest Licencees and Resource-Based Tourism Establishment Licencees in Ontario and is endorsed by a steering committee comprised of representatives from the Forestry Industry, the Resource-Based Tourism Industry, the Ministry of Natural Resources (MNR), the Ministry of Tourism (MTOUR) and the Ministry of Northern Development and Mines (MNDM).

Principles:

This Memorandum is based on mutual recognition of and respect for the legitimacy and presence of the tourism and forestry industries.

In particular:

A. The Forest Industry of Ontario recognizes the importance of resource-based tourism industry operations in the forests of Ontario;

B. The Resource-Based Tourism industry of Ontario recognizes the importance of forest industry operations in the forests of Ontario;

C. The Forest and Resource-Based Tourism industries desire a pro-active long term approach to conducting operations and resolving conflicts involving their respective activities in the forests of Ontario;

D. The Forest and Resource-Based Tourism industries will, on a voluntary basis, promote each other's interests to third parties when reasonable and appropriate.

E. The MNR, MTOUR, MNDM and the two industries recognize the following interests as critical to the continued success and viability of industry operations:

I: For the forest industry:
   (a) minimize the cost of wood delivered to the mill;
   (b) no long term reduction in the supply of fibre and timber;
   (c) security and accessibility of fibre supply;
   (d) sustainability of the forest resource for future generations;
   (e) protection of other forest values; and
   (f) management of the forest resource in accordance with legislative and policy requirements governing forest management planning in Ontario;

(g) sustainability and enhancement of fibre supply, timber supply and forestry opportunities necessary for forestry industry viability;

II: For the Resource Based Tourism industry:
(a) natural aesthetics;
(b) remoteness, including maintenance of traditional means of access;
(c) maintenance of the perception of wilderness, including minimization of noise;
(d) sustainability and enhancement of fish, game, and wilderness opportunities necessary for tourism operations; and
(e) maintenance of the perception of Ontario as a world class wilderness tourism destination;

Terms of Agreement

Therefore, the two industries agree in this Memorandum as follows:

1. Every Forest Management Plan (FMP) in Ontario will include a statement confirming the commitment of part of the FMP to maintain the viability of the tourism industry by protecting tourism values in the forest management planning process through the application of the Timber Management Guidelines for the Protection of Tourism Values (the Guidelines) and the use of RSA's as one method of protecting and sustaining these values;

2. The MNR, MTOUR, and the tourism and forest industries will approve criteria that will permit the mapping of tourism values. This mapping will be developed and maintained as part of each FMP. The MNR and MTOUR will provide a draft of proposed criteria to the two industries within 60 days of completion of this Memorandum. The Working Group or its representatives will define the criteria at a meeting with MNR and MTOUR to be held within 90 days of the completion of this Memorandum. In the event a dispute over the criteria remains after this meeting, MNR and MTOUR will define the criteria.

3. The Guidelines will include a list of tools available to address the Tourism and Forestry interests set out in this Memorandum, and provide guidance in creating the prescriptions in a particular RSA. In addition, the Guidelines will not contradict any provision to this Memorandum.

4. Every RSA shall as a minimum follow the framework and contain the terms set out in Appendix "A" to this Memorandum.

5. This is the entire agreement, and if any term is changed without the express consent of all signatories, then the agreement is void.

Appendix A: Framework of an RSA

1) An RSA is an agreement negotiated between two legal entities: a Resource Based Tourism Establishment licencee (RBT) as determined by the Ministry of Tourism, and a Sustainable Forest Licencee (SFL). If the parties so agree, an RSA may involve more than one RBT, and more than one SFL but each RSA will be signed by an individual RBT and an individual SFL. If multiple parties are

involved, the parties by negotiation may agree on a Management Structure to implement the RSA. This right to negotiate an RSA will be extended to the successors to such RBT designations as MTOUR may determine.

2) An RSA will contain:
   a) A map containing the projected twenty (20) year primary road corridors, the projected five year secondary road corridors, and Tourism values to be protected over the next twenty (20) year period;
   b) A statement of the principles in this Memorandum;
   c) A section containing the prescriptions affecting forest management that will be approved by the MNR and included as part of a Forest Management Plan (FMP) under the Crown Forest Sustainability Act (CFSA); and
   d) Any other provisions the parties agree to that are not part of an FMP.

3) Nothing in the RSA shall abrogate or derogate from or add to Aboriginal or treaty rights.

4) All RSA's will comply with all provincial legislation and polices. Only parties to RSA's will be bound by RSA's.

5) The RSA negotiation process will normally be commenced prior to the Invitation to Participate in the FMP process and completed for the first Information Centre Open House. The SFL will contact by registered mail, during the appropriate time of the year to ensures the general availability of the RBT, all RBT's who operate in the Forest Management Unit (FMU). Each RBT will receive the projected 20-year primary and five year secondary road corridors from the SFL as part of the initial contact. The SFL will negotiate with any RBT who notifies the SFL that it wishes to negotiate an RSA. Thirty (30) days after sending the initial contact letter, the SFL will provide the MTOUR with a list of those RBT's who have not responded. If the SFL does not receive notice within thirty (30) days from MTOUR or the RBT that the RBT is interested in negotiated an RSA, then the SFL may presume that the respective business interests are protected by application of the ecological guidelines. The MNR will consider the RBT's failure to seek negotiations in its approval of an FMP.

6) Parties agree in RSA negotiations to apply prescriptions to protect specific tourism values. Where the tourism operator has identified remoteness as a value to be protected, then the prescriptions identified in the Tourism Guidelines shall be applied to maintain a reasonably similar level of remoteness as existed prior to forest management operations. The prescriptions to be considered will include, but are not limited to: no harvest areas; functionally roadless strategies; modified operations.

7) The RSA process up to and including the arbitration process, if any, will be completed before recourse to the Forest Management Planning dispute resolution process or the right to an EA "designation request" are available.

8) If the RBT has contacted the SFL but is unwilling to commence negotiations to complete an RSA, then the SFL will be able to complete operations in accordance with the ecological guidelines applicable to the area. If the SFL is unwilling to commence negotiations to complete an RSA, then the MNR will in its discretion either not approve an FMP for that FMU, or will not approve the commencement of harvesting operations. For the purpose of this paragraph "unwilling to commence negotiations" means refusing to meet with the other party.

9) If the parties are unable to negotiate an RSA, then either party may seek mediation. The mediation will last a maximum of one day unless otherwise agreed by all parties, and will be conducted by the MNR or a mediator appointed by the MNR. The mediation will be conducted within fifteen (15) days of the request for mediation. If the MNR determines that a mediation is impractical or impossible within fifteen (15) days, then no mediation will be conducted unless the parties otherwise agree. Mediation is confidential, and any offers, options or discussions regarding potential settlements will not be disclosed in or used as the basis for a decision in any subsequent proceeding.

10) If the parties do not agree at mediation, then an arbitration will be conducted on the following terms:
- the arbitration will be completed within thirty (30) days of the request for arbitration,
- the maximum duration of the arbitration shall be two (2) days;
- each party will pay to the MNR five hundred ($500) dollars towards the cost of arbitration;
- the arbitrator will be selected by the MNR from a regional list of arbitrators approved by the two industries;
- where the dispute affects a lake where timber harvesting practices are by clear- cutting (as defined in the revised Tourism Guidelines), the arbitrator shall make a decision based on the principles of this Memorandum in order to allocate fifty (50) percent of the Mutual Allocation Zone to each party. The Mutual Allocation Zone is defined as a zone extending two hundred (200) metres from the shoreline of the lake and within the area defined as the five year timber allocation. Each party must define for and present to the arbitrator, a map and rationale showing one half of the area in the zone to be designated as a no-cut reserve, and one half of the area in the zone to be designated as harvest, so long as no zone designation contravenes the ecological Forest Management Planning Guidelines of which define the minimum distance from shoreline available for harvest.
- for all other issues the arbitrator shall decide as he or she considers just and appropriate in accordance with the following documents:
  a) the principles contained in this Memorandum;
  b) the Forest Management Planning Guidelines; and
  c) the map of values and projected road patterns.
- the Arbitrator may award costs to a maximum of an additional one thousand ($1000) dollars against an unreasonable party, to be paid to the successful party.

11) In the event the parties are not satisfied with the result of the arbitration, either may then use the other legal remedies available to resolve disputes under the CFSA or the EA Act, when they become available.

12) Every RSA that is completed by negotiation or mediation will be deemed to comply with the normal application of the Guidelines, but only for the purpose of confirming that no "beneficiary pay" charge will be applied to such RSA's.

13) Every RSA that is completed as a result of the RSA arbitration process, the Forest Management Planning dispute resolution process, or an EA "designation request" will be subject to a determination by the MNR, after completion of the relevant FMP, and in light of the final terms of the RSA as included in the FMP. The MNR will determine whether there is protection in excess of the normal application of the Guidelines, whether there is a beneficiary, whether there is a loss or cost to the SFL, and, if so, order payment of the amount the cost or losses to the SFL. In the event the MNR determines that the normal application of the Guidelines has not been achieved, it may order the payment of compensation to the RBT.

14) Every RSA shall:
   a) be an evergreen agreement, if agreed to, or shall have a minimum term equal to the term of the FMP and a planning horizon of at least 20 years;
   b) be transferable, on the following terms:
      i. Any transferee who is an RBT (or non-licenced tourism operator who takes reasonable steps at the time of the transfer to become an RBT and receives a licence within a reasonable time) or SFL must agree to be bound by the terms of the RSA;
      ii. A transfer to a non-licenced tourism operator, except those described in subsection (i) above, or any person other than an RBT or SFL will void the requirements and obligations of the RSA; and
      iii. Notice will be provided to the parties to an RSA, to the MNR, and to MTOUR by the transferor prior to the transfer;
   c) be amendable only on mutual consent of the parties or as a result of the amendment of the FMP by order of the MNR;
   d) have prescriptions which will protect the tourism values identified in the RSA through the application of the Guidelines and the inclusion of the prescriptions in the FMP;
   e) contain a commitment to share information and a list of reference material available for use in negotiating the RSA;
   f) apply to a specific geographic area determined by the results of the RSA negotiations and agreed to by the parties; and
   g) be a commitment binding on all overlapping licencees of the SFL.

15) Auditing, Monitoring, enforcement and reporting for those portions of the RSA included in an FMP will be conducted by the MNR and the SFL in accordance with FMP requirements.

16) Every RSA, to the extent it is included or referenced in an FMP, is subject to final approval by the MNR. In the event an RSA is amended as a result of an order of the MNR, the parties to the RSA will meet to determine whether further negotiations are required.

17) The parties will be responsible for monitoring and enforcing sections of the RSA that are not included in an FMP.

Dated: June 7, 2000

[The original was signed and dated as indicated in italics:]

We the undersigned, as members of the RSA Working Group, do hereby recommend to the Steering Committee for approval, the attached Agreement, entitled "Tourism and Forestry Industry Memorandum of Understanding, Revision #5",

Dated the 26th day of April, 2000 in the City of Toronto, Province of Ontario.

Brad Greaves	*Bill Thornton*
Mal Tygesson	*Craig Boddy*
Bill Roll	*Sergio Buonocore*

We the undersigned as members of the RSA Steering Committee do hereby recommend to the Ministers of Natural Resources, Northern Development and Mines, and Tourism for approval, the attached Agreement entitled "Tourism and Forestry Industry Memorandum of Understanding", dated June 7, 2000.

Patricia Malcolmson	*28/6/00*	*Peter Elmhirst*	*July 18, 2000*
Jim McClure	*29/06/00*	*Don Hopkins*	*June 29, 2000*
Jean Lam	*July 21/00*	*Jim Lopez*	*July 11, 2000*
Betty McGie	*07/07/00*	*Glen Swant*	*July 7, 2000*

We the undersigned recognise and support the "Tourism and Forestry Industry Memorandum of Understanding."

John C. Snobelen
Minister of Natural Resources

Tim Hudak
Minister of Northern Development and Mines

Cam Jackson
Minister of Tourism

Appendix 2

OUTLINE OF A TYPICAL RESOURCE STEWARDSHIP AGREEMENT

Preamble

- the date of the agreement
- the parties to the agreement
- the purpose of the agreement

Principles and Objectives

- the principles of the MoU (see Appendix 1 of the Guide)
- the objectives of the parties

Part 1: Provisions Proposed for Inclusion in Forest Management Plan

1.1 RSA Area

- map showing and/or text describing the boundary of the area of the agreement (see Sections 3.2 and 3.3 of the Guide)

1.2 Road Corridors

- maps showing primary and secondary road corridors, or best available information on anticipated corridors (see Sections 3.2 and 4.1 of the Guide)

1.3 Tourism Values

- map showing tourism values in the management unit (see Sections 3.2 and 5.2 of the Guide)
- map showing tourism values that contribute to the RBT operation that is party to the agreement (see Sections 3.2 and 5.2 of the Guide)

1.4 Forest Management Prescriptions

- in order to protect the tourism values that contribute to the RBT operation that is party to the agreement, the parties propose that forest operations be conducted as follows (describe for each value), and road use be managed as follows (describe for each value) (see Sections 3.2 and 5.3 of the Guide)
- if applicable, the beginning and ending benchmark dates for the determination of "reasonably similar level of remoteness" (see Section 5.3 of the Guide)
- map showing location of the prescriptions

1.5 Tourism Business Interest Map

- optional whether to develop, and if developed, optional whether to include in Part 1 or Part 2 (see Section 5.2 of the Guide)

Part 2: Other Provisions

Interests of others

2.1 Other Interests in the Crown Forest

- confirmation that the parties have considered and taken into account the interests of other stakeholders in the Crown forest in the area of the agreement

Information

2.2 Information Sharing

- commitment to share information with each other (see Section 7 of the Guide)

2.3 Communication

- optional
- commitment to inform other land and resource users about relevant provisions of the agreement (see Section 7 of the Guide)

2.4 Reference Material

- list of the reference material available to the parties in their negotiations

Future provisions (if an evergreen or other longer term agreement; optional whether to include in Part 1 or Part 2)

2.5 Long Term Objectives

- objectives or intentions of the parties with respect to future FMPs (see Section 3.4 of the Guide)

2.6 Future Forest Management Prescriptions

- forest management prescriptions that the parties will propose in future FMPs (see Section 3.4 o the Guide)

Non-forest management provisions

2.7 Other Provisions

- any provisions that do not concern forest management

Administration

2.8 Term

- when do the Part 1 and Part 2 provisions take effect? (see Section 3.5 of the Guide)
- for how long is the agreement in force? (see Section 3.4 of the Guide)

2.9 Management Structure

- optional, if the RSA overlaps with or relates to other RSAs (see Section 3.2 of the Guide)

2.10 Cancellation

- events that will result in the cancellation of the agreement (see Section 3.6 of the Guide)
- contingency for operating without an RSA

2.11 Transferability

- see Section 3.7 of the Guide

2.12 MNR Approval

- Part 1 provisions being proposed for inclusion in the upcoming FMP are subject to final approval by MNR as part of that FMP (see Section 3.5 of the Guide)
- process if MNR does not approve Part 1 provisions for inclusion in the FMP, or amends Part 1 provisions following their incorporation in the FMP (see Section 3.8 of the Guide)

Review, Amendment, Renewal

2.13 Monitoring and Evaluating the Agreement

- optional
- how the RBT operation that is party to the agreement will be involved in FMP monitoring and evaluation (see Section 3.6 of the Guide)
- how the parties will evaluate the agreement (see Section 7 of the Guide)

2.14 Reviewing the Agreement

- if an evergreen or other longer term agreement (see Section 3.4 of the Guide), process for review

2.15 Amending the Agreement

- conditions that may lead to the need for amendment
- amendment procedure

2.16 Renewing the Agreement

- process for renewing the agreement (see Section 3.4 of the Guide)
- process for developing/revising Part 1 provisions for future FMPs

Parties are free to include in their RSA any other provisions that are not contrary to Section 3.10 of the Guide.

Appendix 3

ISSUE RESOLUTION FOR MAPPING TOURISM VALUES

Preamble

The purpose of this document is to record the understanding reached among members of the Tourism Guideline Working Group regarding the mapping of tourism values for the purpose of forest management planning and resource stewardship agreement (RSA) negotiations.

Both the forest and tourist industries have expressed concerns regarding mapped information. The tourist industry has noted that they have a need to express both their short and long term interests in the forest and that their interests are often best expressed by identifying "areas". The tourist industry has an ongoing need to have its business interests understood. The forest industry is concerned that forest management planning remain the operational tool for determining how forest operations are conducted and that forest management planning not be used to make land use decisions. The forest industry has a need to identify tourism values so that prescriptions for directing forest operations can be developed for inclusion in forest management plans.

To resolve the issue, two separate maps can be prepared - a Tourism Values Map and a Tourism Business Interest Map.

Tourism Values Map

A Tourism Values Map will be maintained by MNR using data contained in its Natural Resource Values Information (NRVIS) data base in accordance with Appendix 1 – "Criteria for Mapping Values for the Ministry of Natural Resources Natural Resource Values Information System". Noteworthy criteria include the following:

- Tourism establishments will be classified as "remote, semi-remote and drive-in" using definitions contained in the Ontario government approved Resource Based Tourism Policy.
- Only those identifiable features which are considered integral to the operation of a tourism business will be mapped.

The Tourism Values Map will be produced by MNR, based on existing information in NRVIS and in consultation with the Ministry of Tourism tourism advisors.

Tourism Business Interest Map

A Tourism Business Interest Map is a map prepared voluntarily by a resource based tourist operator(s) showing those parts, or all, of a forest management unit that are important for their short and long term business interests. The map, if provided to MNR, will form part of the supplemental documentation to a Forest Management Plan. The forest management planning process will not require the production of such a map, and MNR will neither approve the map nor endorse any land use designations shown on the map.

The Tourism Business Interest Map is intended to assist in the negotiations of an RSA(s). Where an RSA is successfully negotiated, the forest management planning prescriptions contained in the RSA will be made available for public review and comment as part of the normal forest management planning (including plan amendment) process.

This direction is agreed upon and supported by the following members of Tourism Guideline Working Group.

[The original was signed and dated as indicated in italics:]

Betty McGie	*Dec. 7/2000*	*Stephen Harvey*	*Dec. 7/2000*
Bruce Hyer	*Dec. 7/2000*	*Dave Barker*	*Dec. 7/2000*
Bud Dickson	*Dec. 7/2000*	*Heather Barns*	*Dec. 7/2000*
Paul Jewiss	*Dec. 7/2000*	*Paul Glassford*	*Dec. 7/2000*
John McLaren	*Dec. 7/2000*	*Gerry Webber*	*Dec. 7/2000*
Rick Groves	*Dec. 7/2000*	*Sergio Buonocore*	*Dec. 7/2000*
Bill Thornton	*Dec. 7/2000*		

Criteria for Mapping Tourism Values for the Ministry of Natural Resources Natural Resource Values Information System

Introduction

This Guide is intended to assist with the identification of "mapable" tourism values. The purpose of setting out mapable tourism values and criteria is to support the Ministry of Natural Resources in its role as the custodian of an information system for all natural resource values. In the mapping of tourism values as directed by this Guide the Ministry of Tourism will work with the Ministry of Natural Resources to ensure that mapped information is complete and accurate. This information system maintained by Ontario and referred to as the NRVIS (Natural Resource Values Information System) only deals with physical things such as a lake, microwave tower, cottage or lodge. This information assists the Ministry of Natural Resources in a variety of planning and operational functions including the development of forest management plans. There are other things such as District Land Use Guidelines, public comments and, sophisticated computer models that assist planners with the development of plans and 'on-the-ground' actions.

After this "Guide" has been used revisions may be required based on operational experience with Resource Stewardship Agreement negotiations and forest management planning. Ontario's Resource-based Tourism Policy gives particular recognition to the importance of tourism in Ontario's forests.

Once mapped the tourism values may then be addressed in a Resource Stewardship Agreement (RSA), in a Forest Management Plan (FMP) or, in both. Following the preamble is a list of criteria for assessing whether or not something is a value. A list of actual values has also been presented as a tool. Individual circumstances must be considered to determine whether or not something is a value for the purposes of developing RSAs and FMPs.

There is a natural tendency for people involved in such complex work as forest management to attempt to simplify their planning environment. In this case it will be attractive to leap straight to the **list of tourism values** without first understanding the list's significance. **The reader is cautioned; the tourism values list will never be complete. Also, the relatively straightforward act of defining a value does little to establish the significance or relative worth of a value**; it is the business case supporting a value that will attend to this. The **list of criteria** or considerations is much more significant. The list of criteria serves as a filter for determining whether or not a value will be mapped.

Managing for tourism values in the forest is challenging. The forest and tourist industries along with the Ontario government have signed a Memorandum Of Understanding which should assist all parties in meeting this challenge. The MOU takes the first step towards redefining the way in which two important users of the forest are engaged in planning their business operations. The seemingly simple act of mapping values is a vital aspect of the stage which is being set for the negotiation of local agreements between the forest and tourist industries. **It is the 'map' which will represent those things that are important to the tourist industry upon which forestry prescriptions in RSA's will be built.** The

M121

IMPORTANT NOTE CONCERNING THE FOLLOWING PAGES

THE PAGES WHICH FOLLOW HAVE BEEN FILMED TWICE IN ORDER TO OBTAIN THE BEST REPRODUCTIVE QUALITY

USERS SHOULD CONSULT ALL THE PAGES REPRODUCED ON THE FICHE IN ORDER TO OBTAIN A COMPLETE READING OF THE TEXT.

REMARQUE IMPORTANTE CONCERNANT LES PAGES QUI SUIVENT

LES PAGES SUIVANTES ONT ÉTÉ REPRODUITES EN DOUBLE AFIN D'AMÉLIORER LA QUALITÉ DE REPRODUCTION

LES UTILISATEURS DOIVENT CONSULTER TOUTES LES PAGES REPRODUITES SUR LA FICHE AFIN D'OBTENIR LA LECTURE DU TEXTE INTÉGRAL

micromedia
a division of IHS Canada

20 Victoria Street
Toronto, Ontario M5C 2N8
Tel.: (416) 362-5211
Toll Free: 1-800-387-2689
Fax: (416) 362-6161
Email: info@micromedia.on.ca

"Tourism Values" map will be used ultimately in the development of operational forest management prescriptions. It is important to understand and distinguish between the value and the measures intended to address the value or **"forest management prescriptions."**

This document addresses the Tourism Values Map which MNR will produce in consultation with the Ministry of Tourism to support RSA negotiations. Data presented on this map will be reviewed regularly by both the forest and tourist industries and will be subject to change.

Generally speaking **"tourism values"** are natural or cultural resources found in the forest which are important to a tourism activity or experience in which tourists participate. Ultimately it is the tourist who defines a tourism value. Values should relate, then, to the demand individuals have for the product/experience. Ontario's tourist industry caters to a diverse range of clients. The diversity in client base renders the task of defining tourist values problematic. The industry has traditionally been classified as remote, semi remote and drive-in and depends on the availability and maintenance of a number of important values. Remoteness and wilderness are highly valued by segments of the tourist industry. These criteria do not address remoteness and wilderness; however, this in no way diminishes their significance.

Definitions:

Tourism value

For the purposes of proposing forestry prescriptions in a Resource Stewardship Agreement a tourism value is defined as a feature on a map. Once defined on a map and, if forest operations are planned which may affect the feature, prescriptions are developed to protect the feature.

Criteria for mapping tourism values

1. The value must be **capable of being defined spatially**.

For this mapping exercise values must be tangible; something that can be pointed to and touched or seen. There is a distinction between the value, the experience associated with a set of values and the measures taken to protect the value and associated experience. Both the value and associated experience have value to the tourism operator and must be considered in the development of a forest management plan or RSA. Remoteness and wilderness are important values to the tourism industry; however, they are not values which will be entered into NRVIS.

Ontario's Resource-Based Tourism Policy provides definition for three categories of resource-based tourism: remote, semi-remote and drive-in based on the level of existing access.

"Tourism Values" map will be used ultimately in the development of operational forest management prescriptions. It is important to understand and distinguish between the value and the measures intended to address the value or **"forest management prescriptions."**

This document addresses the Tourism Values Map which MNR will produce in consultation with the Ministry of Tourism to support RSA negotiations. Data presented on this map will be reviewed regularly by both the forest and tourist industries and will be subject to change.

Generally speaking **"tourism values"** are natural or cultural resources found in the forest which are important to a tourism activity or experience in which tourists participate. Ultimately it is the tourist who defines a tourism value. Values should relate, then, to the demand individuals have for the product/experience. Ontario's tourist industry caters to a diverse range of clients. The diversity in client base renders the task of defining tourist values problematic. The industry has traditionally been classified as remote, semi remote and drive-in and depends on the availability and maintenance of a number of important values. Remoteness and wilderness are highly valued by segments of the tourist industry. These criteria do not address remoteness and wilderness; however, this in no way diminishes their significance.

Definitions:

Tourism value

For the purposes of proposing forestry prescriptions in a Resource Stewardship Agreement a tourism value is defined as a feature on a map. Once defined on a map and, if forest operations are planned which may affect the feature, prescriptions are developed to protect the feature.

Criteria for mapping tourism values

1. The value must be **capable of being defined spatially**.

For this mapping exercise values must be tangible; something that can be pointed to and touched or seen. There is a distinction between the value, the experience associated with a set of values and the measures taken to protect the value and associated experience. Both the value and associated experience have value to the tourism operator and must be considered in the development of a forest management plan or RSA. Remoteness and wilderness are important values to the tourism industry; however, they are not values which will be entered into NRVIS.

Ontario's Resource-Based Tourism Policy provides definition for three categories of resource-based tourism: remote, semi-remote and drive-in based on the level of existing access.

2. The mapped information **must be accurate**

Decisions which consider the information can result in significant costs or losses to business.

3. The information **must be verifiable**

Decisions made and the actions taken as a result of these decisions will form part of a forest management plan. Forest management plans are legal documents, subject to audit and periodic review.

4. The **information must be timely**

Not all information may be readily available. When information gaps are apparent efforts should be made to gather sufficient information to consider the value effectively in an RSA and forest management plan. While some delay may be inevitable, extraordinary delays can upset the approval of a forest management plan which in turn may lead to significant business losses. Information should be provided in a timely fashion and addressing the gaps in information should be part of good business planning by the tourism business operator.

5. The value **must be related to the operation of a tourism business**

When seeking verification of a tourism value the tourist business operator may be required to demonstrate how the value contributes to the tourism business. Documentation related to the value's contribution to a tourism business may be contained in a business plan, marketing and promotional material or capital investment related to the value. There may be a need to ensure the confidentiality of this information and this can certainly be accommodated; however, the value itself will become public knowledge. Additional characteristics of the value and its use may assist with planning for the value including frequency of use, type of use, time of use and season of use. If the value is a recurring phenomena it may be prudent to state how common the value is (i.e. beaver pond vs. the highest hill in Ontario).

6. The value must be **expressed in terms readily understood by both industries and the Ontario government**

Forest management is complicated; for ease of expression and to facilitate communication among forest management planners lingo and jargon are in common use. Every effort should be made to ensure that the description of a tourism value is expressed in common every-day language. Attention to this will reduce the potential for misunderstandings.

7. **Lake edge or high water mark** *is an important reference point in the establishment of measures for protecting tourism values. The high water mark is a geodetic reference from which tree cover may be measured. While vegetative cover around lakes may address water quality concerns standing trees of a certain height and density may be required to address tourism interests associated with water bodies; measuring the distance of standing tree cover from the high water mark may be useful in delineating forestry prescriptions.*

8. A forest value requiring special consideration as a **tourism value** is a value which does not receive consideration in any of the other 'guidelines.'

There are many "guidelines" which forest managers must consider when developing a forest management plan. In some cases the values addressed in the "guideline" are important to tourism; however, their primary importance is as a component of the forest system or as part of the cultural fabric of the forest. The value placed on these by the tourist industry may not require any specific action to be taken. If, however, through the tourist industry's use of a value, additional consideration must be given to that value then the value becomes a "tourism value." This is perhaps best explained by example. Moose aquatic feeding areas are addressed by the *Timber Management Guidelines for the Provision of Moose Habitat*. If a tourism business markets a specific moose aquatic feeding area as a "moose viewing area," a trail to the area is developed and viewing station established, then there may be special needs above and beyond the provision of habitat which forest managers should consider; the moose aquatic viewing area then becomes a tourism value. If on the other hand, the tourist business brochure simply states that there are abundant opportunities for seeing moose in the area of a lodge then moose aquatic feeding areas have no additional significance attached to them and they should not be defined as a "tourism value."

9. Every tourism value map **must be in the support of one or more of the following resource based tourism interests** as stated in the Tourism and Forestry Industry Memorandum of Understanding
   - Natural aesthetics
   - Remoteness, including maintenance of traditional means of access
   - Maintenance of the perception of wilderness,
   - Sustainability and enhancement of fish, game and wilderness opportunities necessary for tourism operations
   - Maintenance of the perception of Ontario as a world class wilderness tourism destination

List of Tourism Values

It is not intended that prescriptions be developed in each forest management plan for each value listed; rather, only those values identified locally and understood to be important to the tourist industry will have special measures taken to protect them.

A. Tourism Establishments

All establishments will be classified according to Remote, semi remote, drive-in according to the definitions contained in Ontario's Resource-based Tourism Policy.

1. **Remote tourism** – a tourism resource, opportunity, value of potential development that is not accessible by road and is based on a remote wilderness experience where access is only gained through air, water or rail. The important attributes of this product include inaccessibility, isolation from visual and auditory impacts, and high quality environmental resources (e.g. fish and wildlife).

2. **Semi-remote tourism** – similar to a remote tourism opportunity except that road access is limited and may be controlled through artificial means or the use may be limited to protect the resources, opportunity or value. The non-traditional means of access include: restricted road, ATV trail, marine[1], and portage[2]. The same attributes that are important to remote tourism are important here as well, except as how they are changed by the lesser amount of remoteness.

3. **Drive-in resource-based tourism** – includes unencumbered road access in regards to the use of the tourism resource. Important characteristics of this resource include full accessibility, composite use[3], maintenance of both the visual and auditory environmental setting[4] and access to good quality resources.[5]

---

1 Marine refers to traditional waterway access.

2 Portage refers to canoe routes.

3 Composite use refers to two or more compatible uses co-existing in proximity to one another.

4 Refers to the protection of skyline areas of concern and man-made noise abatement.

5 Refers to the importance of having access to ecologically sustainable land,

Main Base Lodges

Description: fixed roof accommodation, has a current resource-based Tourism Licence and commercial land use permit or other form of property tenure. The Tourism Act defines a "base of operations" as 'a license tourist establishment or an air carrier licensed under the laws of Canada from which a tourist outfitter maintains facilities for communication, transportation and the complete maintenance of office records.'

Outpost Camp

Description: fixed roof accommodation, has a current Resource-based Tourism Licence and commercial land use permit or other form of property tenure. The Tourism Act defines an outpost camp as *any fixed or portable rental unit that is remote from a base of operations and accessible only by air, water or forest trails, and is used for commercial purposes.*

B. Roads & Trails

Recreation Trails

- *Description: Winter (dog sled trails, cross country trails, snowshoe trails, snowmobile trails, etc.)*
- *Summer (ATV trails, horse trails, portage trails, etc.)*
- *All Season (hiking trails, hunting trails, etc.)*

Access

Description: road, flight path, water route or rail line providing access to a tourism business or associated value. It is recognized that entire flight paths cannot be addressed; rather, only segments which can be reasonably associated with a tourism experience should be considered a value. Usually it is the final approach portion of a flight path which is a concern

Tourism Access Points

Description: landing, access to water body, access to railroad or other modes of transportation specifically used to access a tourism establishment.

C. Ancillary Features

Shore Lunch & Picnic Sites

Description: includes shore lunch site, etc.

Viewpoint

Description: point for viewing prominent scenery or vista, etc.

Camping Sites

Description: Type "B" Outpost Camp (i.e. Mini LUP) (e.g. moose camps, bear camps, etc.)

Boat Caches

Description: the site where boats are cached according to an MNR permit (applicable in Northwestern Ontario.)

Canoe Routes

Description: route actively marketed for use by guests of Ministry of Tourism licensed resource-based tourism establishments.

Navigable Channel

Description: Generally a narrow channel connecting two water bodies used by guests of a tourism establishment

D. Water-Related Features

Swimming Beach

Description: Not a public beach, but, a beach to which guests from a tourism establishment are directed.

E. Wildlife-Related Features

Fish and Wildlife Viewing Site

Description: that part of the forest that is especially important for viewing of wildlife including moose viewing area, bird feeder area, deer viewing area.

Wildlife Hunting Stations

Description: duck blinds, bear baiting areas, deer stands etc.

F. Cultural/Heritage-Related Features

Cultural Heritage sites

Description: An old building, mine archaeological site, interpretive site, historical site or other cultural feature which because of its use by a tourist establishment requires more protection than that afforded by the "Cultural Heritage Guidelines."

* * *

[The above "Criteria for Mapping Tourism Values" is reproduced exactly as it was appended to the signed and dated original agreement. However, RSA Guide users should be aware of the following.

- *References to the "Guide" mean the "Criteria", not the RSA Guide.*
- *The Ministry of Tourism is now the Ministry of Tourism, Culture and Recreation.*
- *There are no definitions of remote, semi-remote, or drive-in tourism in the Resource-Based Tourism Policy. The definitions provided above are based on definitions provided in "Resource-Based Tourism Policy Information Bulletin #1", issued by MNR in May 1998. They have been further modified for the purposes of the "Criteria", but without changing their general intent.*
- *The* Tourism Act *does not define a "base of operations" or an "outpost camp". The definitions quoted above used to be in Regulation 1037 under the* Tourism Act, *but were revoked in 1998.*
- *Boat caches are applicable only in the western portion of MNR's Northwestern administrative region.*
- *It was intended that "fish and wildlife viewing site" could include a fish viewing area.]*

Appendix 4

MODIFIED RSA PROCESS FOR COMPLEX SITUATIONS

The modified process is the same as described in Section 4.1 and Figure 1, except for the following changes and additions.

Changes to Step 6

The parties agree before or during their negotiations that they are aiming to complete a ***resource stewardship memorandum*** (RSM) before completing an RSA.

A ***resource stewardship memorandum*** is a signed agreement-in-principle between one RBT operation and one SF licensee who are in the process of negotiating an RSA. It should say what the parties are seeking to achieve in the FMP by negotiating an RSA. It should outline the provisions, or the kinds of provisions, the parties would like to propose be included in the FMP, as the parties can best describe them at the time. It should not deal with non-FMP aspects of the prospective RSA. An RSM should include a map of the tourism values that contribute to the RBT operation, and should describe potential forest management prescriptions to protect those values should they be affected by forest operations. It has no status under the MoU; it is a private agreement between the parties and is enforceable as such.

Changes to Step 7

If the negotiations succeed, the RBT operation and SF licensee sign an RSM, which they then forward to the MNR district manager. At this point, the RSM becomes part of the FMP process and is subject to full public consultation.

The RSM should be forwarded to MNR enough in advance of the first Information Centre that it can be included in the information available for public review. A "late" RSM may be acceptable for the reasons described for "late" RSAs in Section 4.1, Step 7. If the parties realize that the RSM they are negotiating will not be ready for the first Information Centre, they should as soon as possible discuss with the plan author and the MNR district manager the acceptability of their "late" RSM. The latest that an RSM should be completed is before the second Information Centre.

New Step 8

The parties resume negotiations towards an RSA, taking into account:

- new information produced as the FMP process progresses,
- response to the RSM from FMP public consultation,
- feedback on the RSM from MNR with respect to its decision-making criteria listed in Section 3.5.

The negotiations may involve a back-and-forth process between the parties, MNR, the local citizens committee, and the rest of the public as the FMP process proceeds through the Information Centres and preparation of the draft FMP.

New Step 9

If the negotiations succeed, the RBT operation and the SF licensee sign an RSA and forward it to MNR, the same as in Section 4.1, Step 7. The latest that Step 8 should ever be completed is in time for its proposals to be included in the draft FMP, just before the draft is made available for public review.

If between the RSM and the RSA the parties introduce major changes that would affect the FMP and that do not appear to be justified by new information or public or MNR response, they may deny the public adequate opportunity for considering these changes within the FMP process. MNR will take this into account in deciding whether to approve the provisions the RSA proposes to include in the FMP.